



**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 902**

**50 CFR Part 679**

**[Docket No. 230728-0179]**

**RIN 0648-BL08**

**Fisheries of the Exclusive Economic Zone Off Alaska; Amendment 122 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area; Pacific Cod Trawl Cooperative Program**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement Amendment 122 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). Amendment 122 establishes the Pacific Cod Trawl Cooperative Program (PCTC Program or Program), a limited access privilege program (LAPP) to harvest Pacific cod in the BSAI trawl catcher vessel (CV) sector. The PCTC Program allocates Pacific cod harvest quota to qualifying groundfish License Limitation Program (LLP) license holders and qualifying processors and requires participants to form cooperatives to harvest the quota. This action is necessary to increase the value of the fishery, minimize bycatch to the extent practicable, provide for the sustained participation of fishery-dependent communities, ensure the sustainability and viability of the resource, and promote safety and stability in the harvesting and processing sectors. This action is intended to promote the goals and objectives of the Magnuson-Stevens

Fishery Conservation and Management Act (Magnuson-Stevens Act), the BSAI FMP, and other applicable law.

**DATES:** This rule is effective on September 7, 2023.

**ADDRESSES:** Electronic copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Social Impact Analysis (collectively referred to as the “Analysis”), and the Finding of No Significant Impact (FONSI) prepared for this final rule may be obtained from <https://www.regulations.gov> in docket number NOAA-NMFS-2022-0072 or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Gretchen Harrington; and to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find the particular information collection by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Warpinski, 907-586-7228 or [stephanie.warpinski@noaa.gov](mailto:stephanie.warpinski@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS published a Notice of Availability for Amendment 122 in the Federal Register on December 30, 2022 (87 FR 80519), with public comments invited through February 28, 2023. NMFS published a proposed rule to implement Amendment 122 in the Federal Register on February 9, 2023 (88 FR 8592) with public comments invited through March 13, 2023. The Secretary of Commerce approved Amendment 122 on March 24, 2023 after considering information from the public and determining that Amendment 122 is consistent with the BSAI FMP, the Magnuson-Stevens Act, and other applicable laws. NMFS received 16 comment letters on Amendment 122 and the proposed rule. A summary of the comments and NMFS’ responses are provided under the heading “Comments and Responses” below.

## **Background**

The following background sections describe the PCTC Program and this final rule. A detailed description of the PCTC Program and its development is provided in the preamble to the proposed rule and in the Analysis.

### **I. Pacific Cod Management in the BSAI**

Pacific cod (*Gadus macrocephalus*) is one of the most abundant and valuable groundfish species harvested in the BSAI. Vessels harvest Pacific cod using trawl and non-trawl gear. Vessels harvesting BSAI Pacific cod operate as CVs that harvest and deliver the fish for processing or as catcher/processors (CPs) that harvest and process the catch on board.

The overfishing level (OFL), acceptable biological catch (ABC), and total allowable catch (TAC) for BSAI groundfish are specified through the annual harvest specification process. A detailed description of the annual harvest specification process is provided in the final 2023 and 2024 harvest specifications for groundfish of the BSAI (88 FR 14926, March 10, 2023). For Pacific cod, the harvest specifications establish separate OFLs, ABCs, and TACs for the Bering Sea (BS) subarea and the Aleutian Islands (AI) subarea of the BSAI. Allocations of Pacific cod to the Community Development Quota (CDQ) Program sector and to the non-CDQ fishery sectors are further apportioned by seasons. Season dates for the CDQ and non-CDQ fishery sectors are established at 50 CFR § 679.23(e)(5). In general, regulations apportion trawl gear allocations among three seasons that correspond to January 20 – April 1 (A season), April 1 – June 10 (B season), and June 10 – November 1 (C season).

The trawl CV sector is apportioned 22.1 percent of the BSAI Pacific cod non-CDQ TAC, which is further divided into seasonal allowances between the A, B, and C seasons. A season is issued 74 percent of the trawl CV sector's total apportionment, B season is issued 11 percent, and C season is issued 15 percent. After NMFS deducts

estimated incidental catch from the trawl CV sector apportionment, each seasonal allowance is assigned to the trawl CV sector as a BSAI directed fishing allowance (DFA).

NMFS implemented the Groundfish License Limitation Program (LLP) in 1998 (63 FR 52642, Oct. 1, 1998) and issued LLP licenses to qualifying participants based on historical participation in the Federal groundfish fisheries off Alaska. A groundfish LLP license authorizes a vessel to participate in a directed fishery for groundfish in the BSAI in accordance with specific area and species endorsements, vessel and gear designations, and the maximum length overall (MLOA), or any exemption from the MLOA, specified on the license. All Federal Pacific cod harvesting activity in the BSAI requires an LLP license and the correct endorsements.

AI endorsements issued to certain LLP licenses under Amendment 92 to the BSAI FMP were intended to facilitate shoreside deliveries of Pacific cod to AI communities and provide additional harvest opportunities for non-American Fisheries Act (AFA) trawl vessels who had demonstrated a dependence on AI groundfish resources. The AI endorsements issued to LLP licenses used by non-AFA trawl CVs less than 60 ft (18.3 m) length overall (LOA) are severable from the LLP license and transferable to another LLP licenses with a MLOA under 60 ft (18.3 m) LOA. The transferability provision was intended to allow smaller vessels operational flexibility and avoid stranding an AI endorsement on an LLP license being used by a vessel that no longer fished in the AI. No other area endorsement in the LLP can be transferred separately from an LLP license.

## **II. PCTC Program Overview**

The PCTC Program implements a complex suite of measures to improve fishery conditions for all participants. This Program establishes criteria for harvesters and processors in the BSAI trawl CV sector Pacific cod fishery to qualify for and receive quota share (QS), criteria for allocating QS in the initial year of implementation, and

criteria for the transfer of QS. QS holders are required to join a cooperative (harvesters) or associate with a cooperative (processors). The aggregate QS of cooperative members and associated processors yields an exclusive harvest privilege for PCTC Program cooperatives, which NMFS will issue as cooperative quota (CQ) each year. CQ represents a portion of the A and B season BSAI trawl CV sector Pacific cod DFA. Of the total annual CQ, 77.5 percent is derived from QS issued to LLP licenses, and 22.5 percent is derived from QS issued to processors. The DFA for the C season remains available for harvest as a limited access fishery open to all CVs with the required trawl gear and area endorsements on the LLP license assigned to the vessel.

The PCTC Program includes ownership and use caps to prevent a permit holder from acquiring an excessive share of the fishery as required under Magnuson-Stevens Act section 303A(c)(5)(D). No person is permitted to hold more than 5 percent of harvester-issued QS or 20 percent of processor-issued QS. In addition, no vessel is allowed to harvest more than 5 percent of the annual CQ, and no company is allowed to process more than 20 percent of the annual CQ. The PCTC Program also includes legacy exemptions for persons over these ownership and use caps at the time of PCTC Program implementation, allowing participants to maintain levels of historical participation rather than forcing divestiture.

The PCTC Program reduces the halibut and crab Prohibited Species Catch (PSC) limits for participating trawl CVs during the A and B seasons. NMFS will apportion halibut and crab PSC limits to PCTC Program cooperatives during the annual harvest specifications process based on the percentage of total BSAI Pacific cod CQ allocated to each cooperative.

To support the sustained participation of AI communities in the Pacific cod trawl CV fishery, cooperatives are required to collectively set-aside 12 percent of the A season CQ for delivery to an Aleutian Islands shoreplant (AI CQ set-aside) during years in

which an AI community representative notifies NMFS of their intent to process Pacific cod.

The following sections describe the primary management measures included in the PCTC Program. Each Program element is discussed in further detail in the preamble to the proposed rule prepared for this action (88 FR 8592, February 9, 2023).

### **III. Quota Share for Harvesters and Processors**

NMFS established a PCTC Program official record containing all necessary information concerning legal landings of Pacific cod during the qualifying period, vessel and processor ownership, LLP license holdings, and any other information needed for assigning QS. NMFS will use the PCTC Program official record as of December 31, 2022 to establish the initial pool of QS that will be distributed to eligible harvesters and processors.

#### *A. Initial Allocation of Quota Share for Harvesters*

Under the PCTC Program, NMFS will assign QS to eligible LLP licenses. “Eligible PCTC Program LLP license” means an LLP license that has qualifying catch history (*i.e.*, was assigned to a vessel that made qualifying legal landings) of targeted trawl CV BSAI Pacific cod during the qualifying years. The amount of QS allocated to individual LLP licenses is determined by historic participation relative to other LLP licenses, as described below.

“Legal landings” means the retained catch of Pacific cod caught by a CV using trawl gear in the BSAI during the directed fishing season for Pacific cod that was: 1) made in compliance with state and Federal regulations in effect at that time, 2) recorded on a State of Alaska fish ticket or shoreside logbook for shoreside deliveries or in observer data for mothership deliveries, and 3) was the predominately retained species on the fishing trip (*i.e.*, Pacific cod was targeted). A legal landing must have been authorized by either 1) an LLP license participating in the A or B season of a Federal or parallel

State water groundfish fishery during the qualifying years 2009 to 2019, or 2) an LLP license with a transferable AI endorsement that, prior to receiving that AI endorsement, participated in the AI parallel fishery from January 20, 2004 through September 13, 2009. NMFS determines which LLP license(s) were assigned to CVs that harvested and offloaded Pacific cod that met all legal landings requirements. Legal landings for the PCTC Program do not include landings in the CDQ fishery, in the State of Alaska Guideline Harvest Level fishery, or made during the C season by vessels participating in a Federal or parallel State water fishery.

Under this final rule, the Regional Administrator will allocate PCTC Program QS to an LLP license holder who submits a timely Application for PCTC Program QS that is approved by NMFS. For each LLP license without a transferable AI endorsement, NMFS will assign a specific number of PCTC Program QS units based on the BSAI trawl CV Pacific cod legal landings of that LLP license using information from the PCTC Program official record according to the following procedures:

- 1) Determine the BSAI trawl CV Pacific cod legal landings authorized by an LLP license for each calendar year from 2009 through 2019.

- 2) Drop from consideration the calendar year in which the LLP license had the least amount of legal landings. If an LLP license had one or more years with zero harvest, drop one of those years.

- 3) Sum the Pacific cod legal landings for the 10 years in which each LLP license had the most landings. This yields the QS units for each LLP license.

For each LLP license with a transferable AI endorsement, NMFS will assign a specific number of PCTC Program QS units based on the legal landings of each vessel that was used to generate the transferable AI endorsement and subsequent legal landings authorized by the LLP license associated with the endorsement using information from the PCTC Program official record according to the following procedures:

1) Determine the BSAI trawl CV Pacific cod legal landings for each vessel used to generate the transferable AI endorsement from January 20, 2004 through September 13, 2009 and the LLP license associated with that transferable AI endorsement from September 14, 2009 through the end of 2019.

2) Drop from consideration the calendar year which the vessel used to generate the transferable AI endorsement (January 20, 2004 – September 13, 2009) or the associated LLP license (2009 –2019) and during which the vessel had the least amount of legal landings. If a vessel or LLP license had one or more years with zero harvest, drop one of those years.

3) Sum the Pacific cod legal landings of the highest fifteen years for each LLP license with transferable AI endorsement. This yields the QS units for each LLP license with a transferable AI endorsement.

After the QS units for the LLP licenses with and without transferable AI endorsements are determined under part 3 of each scenario above, NMFS sums all harvester QS units to calculate the harvesters' total QS pool. NMFS will then determine what portion of the 77.5 percent of the A and B season DFA allocated as harvester QS is represented by each LLP license's QS units. To do so, NMFS will divide each LLP license's total QS units by the sum ( $\Sigma$ ) of all QS units for all eligible LLP licenses based on the PCTC Program official record as presented in the following equation:

$$\text{LLP license's QS units} / (\Sigma \text{ QS units for all LLP licenses}) \times 100 = \text{Percentage of the total harvester QS pool allocated to that eligible LLP license.}$$

The result (quotient) of this equation is the percentage of the total harvesters' portion of PCTC Program QS allocation (which is 77.5 percent of the A and B season DFA) that a QS holder can assign to a cooperative each year.

NMFS will not divide QS among LLP licenses. The current LLP license owner is entitled to all QS derived from the LLP license and transferable AI endorsement catch



history, unless compensation was required by a private agreement associated with the sale of the LLP license.

Some legal landings during 2009 through 2019 were made by vessels with two or more associated LLP licenses. In these cases, NMFS will assign the qualifying catch history to a single LLP license in one of two ways. First, the LLP license owners may come to an agreement regarding the division of qualifying catch history and submit this agreement to NMFS when they apply for QS. Second, if no agreement is provided by the LLP license holders, the owner of the vessel that made the qualifying catch can assign the history to one of the LLP licenses that authorized the catch.

*B. Initial Allocation of Quota Share for Processors*

“Eligible PCTC Program processor” means a processing facility with an active Federal Fisheries Permit (FFP) or Federal Processing Permit (FPP) (subject to eligibility requirements under Amendment 120 to the BSAI FMP to limit CPs acting as mothership) that has historically received Pacific cod legal landings during the PCTC Program qualifying years. NMFS will issue QS to the owner of an eligible PCTC Program processor based on deliveries of legal landings in the Federal BSAI Pacific cod trawl fishery in the A and B seasons for each calendar year from 2009 through 2019, with the calendar year in which the processor received the least amount of legal landings dropped from the calculation. Owners of eligible PCTC Program processors must submit a timely and complete Application for PCTC Program QS.

Processors that are no longer active (*i.e.*, no longer hold an FPP or FPP upon the effective date of this final rule) will not be issued QS. The processing history associated with those processors will be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

NMFS will assign a specific number of PCTC Program QS units to each processor’s PCTC Program QS permit based on the qualifying legal landings delivered to

the processor using information from the PCTC Program official record according to the following procedures:

1) Determine the BSAI trawl CV Pacific cod legal landings in the A and B seasons delivered to each eligible processor for each calendar year from 2009 through 2019.

2) Drop from consideration the calendar year in which the processor received the least amount of legal landings. If a processor had one or more years with zero processing of Pacific cod legal landings, drop one of those years.

3) Sum the Pacific cod legal landings of the highest 10 years for each eligible processor. This yields the QS units for each processor.

4) Divide the QS units for each eligible processor by the sum ( $\Sigma$ ) of all QS units for all processors based on the PCTC official record as presented in the following equation:

$$\text{Processor's QS units} / \Sigma \text{ all processor QS units} \times 100 = \text{Percentage of the total processor QS allocation for that processor.}$$

The result (quotient) of this equation is the percentage of the total processors' portion of PCTC Program QS allocation (which is 22.5 percent of the A and B season DFA) that a QS holder can assign to a cooperative each year.

**Table 1–PCTC Program Initial QS Pool in Units**

Species	PCTC Program initial QS pool in units
Pacific cod (Holders of LLP Licenses with no transferable AI endorsement)	$\Sigma$ highest 10 years of BSAI Pacific cod catch history in metric tons in the PCTC official record as of December 31, 2022 for LLP license holders.
Pacific cod (Holders of LLP licenses with a transferable AI endorsement)	$\Sigma$ highest 15 years of BSAI Pacific cod catch history in metric tons in the PCTC official record as of December 31, 2022 for holders of LLP licenses with a transferable AI endorsement.
Pacific cod (All processors)	$\Sigma$ highest 10 years BSAI Pacific cod processing history in metric tons in the PCTC official record as of December 31, 2022 for that BSAI Pacific cod for eligible processors.

### *C. Application for PCTC Program QS*

A person must submit an Application for PCTC Program QS in order to receive an initial allocation of PCTC QS. NMFS requires an application to ensure that QS is assigned to the appropriate person(s) and to provide a process for resolving claims of legal landings that are contrary to the PCTC Program official record. Once a person submits an Application for PCTC Program QS that is approved by NMFS, that person will not need to resubmit an application for QS in future years. NMFS will post a list of the eligible PCTC Program LLP license holders and the eligible PCTC Program processors on the NMFS Alaska Region webpage (see ADDRESSES).

NMFS will mail an application package to the address on record for all potentially eligible LLP license holders and processors. This package will include a letter informing potentially eligible LLP license holders and processors whether NMFS has determined they are eligible to receive QS, and if so, the amount of QS calculated by NMFS based on qualifying catch or processing history from the PCTC Program official record.

Applications will also be available on the NMFS Alaska Region webpage (see ADDRESSES), and interested persons can also contact NMFS RAM to request an application package.

An Application for PCTC Program QS can be submitted electronically or by mail as indicated in the instructions provided on the application. A completed Application for PCTC Program QS must be received by NMFS no later than 1700 hours AKST on October 10, 2023, or if sent by U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application. If participants do not submit an application by the deadline, they will forfeit their PCTC Program QS.

If a participant agrees with the PCTC Program official record summary, they still must submit an Application for PCTC Program QS by the deadline.

If a participant did not receive an application package from NMFS, they may still apply for QS by submitting an Application for PCTC Program QS and providing evidence of qualifying participation in the BSAI trawl CV sector Pacific cod fishery by the application deadline.

If a participant would like to receive QS and does not agree with the PCTC Program official record summary, they must complete an Application for PCTC Program QS by the application deadline and provide evidence of any claims of participation that are contrary to the official record.

If an LLP license holder's PCTC Program official record summary includes shared catch history, the participants with shared catch history must execute an agreement specifying the amount of shared catch history to assign to each LLP license. If NMFS does not receive an agreement, the owner of the catcher vessel designated on the LLP licenses at the time of harvest will determine the amount of QS assigned to each permit.

#### *D. QS Application Review and Appeals*

If any applicant disagrees with NMFS's initial calculations and provides documentation with their Application for PCTC Program QS to support a claim of catch history that is different from the PCTC Program official record, NMFS will determine whether such documentation is sufficient to amend the official record. If so, NMFS will issue QS to the applicant. If not, NMFS will inform the applicant that the submitted documentation was insufficient and provide the applicant with a 30-day evidentiary period to further support their claims. After the close of the 30-day evidentiary period, NMFS will make its final decision about the official record and issue an initial administrative determinations (IAD) to the applicant. Applicants who disagree with the IAD may appeal NMFS's decision through the NOAA National Appeals Office according to the procedures found at 50 CFR 679.43.

NMFS will identify in an IAD any deficiencies or discrepancies in the application, including any deficiencies in the information or evidence submitted to support an applicant's claims challenging the official record. NMFS's IAD will state which claims cannot be approved based on the available information or evidence and provide information on how an applicant can appeal an IAD. An applicant who appeals an IAD will not receive QS for contested landings data unless and until the appeal is resolved in the applicant's favor. Once NMFS has approved an Application for PCTC Program QS in its entirety, NMFS will assign QS units to an applicant's LLP license or issue a processor a PCTC Program QS permit with a specified number of QS units.

For the 2024 fishing season, NMFS will issue CQ to cooperatives based on the QS held by cooperative members at the time of CQ issuance. Any ongoing appeals or QS transfers allowed under the 90-day transfer window for AFA non-exempt CVs will apply to subsequent fishing years.

#### *E. Transferring QS*

Under the PCTC Program, QS holders may transfer QS concurrently with the transfer of the LLP license, AI endorsement, or processor PCTC Program QS permit. In order to transfer QS, a QS holder must submit to NMFS an Application for Transfer of License Limitation Program Groundfish/Crab License or the Application for Transfer of Pacific Cod Trawl Cooperative Program Quota Share (QS) for Processors. Transfer of QS requires approval by NMFS to properly track ownership caps. For harvesters, QS may be transferred with an LLP license or a transferable AI endorsement to another person through the existing LLP transfer provisions described in regulations at 50 CFR 679.4(k)(7). Each application must include any additional information needed for the transfer of QS, including amount of QS to be transferred (generally all QS attached to the license), the transferee, and the sale price of QS. Applications are available on the NMFS

Alaska Region webpage (see ADDRESSES). Complete applications can be submitted to NMFS electronically.

To facilitate cooperative formation under the PCTC Program in the first year, QS transfers submitted after November 1 and prior to the start of PCTC Program fishing season will be applied to the following year, meaning if a transfer was submitted in December 2023, the transfer would not be applied until after the PCTC Program fishing season ends in 2024.

Under Amendment 92, the AI endorsements issued to LLP licenses used by non-AFA trawl CVs less than 60 ft (18.3 m) LOA are severable from the LLP license they were initially issued and transferable to another LLP licenses with a MLOA under 60 ft (18.3 m) LOA. NMFS modified the LLP license transfer regulations to clarify the process for transferring an AI endorsement independent of the LLP license. As part of the application process, a person must specify the LLP license to which the transferred AI area endorsement will be assigned.

Once PCTC Program QS is issued, the QS units will remain attached to the associated LLP license or processor's PCTC Program QS permit in most circumstances and cannot be severed or otherwise transferred independently. There are several limited exceptions to non-severability: 1) QS can be fully or partially transferred during the limited 90-day transfer provision for non-exempt AFA CVs; 2) QS attached to LLP licenses with a transferable AI endorsement can be transferred along with the endorsement to another LLP license that meets the criteria for a transferable AI endorsement (endorsements cannot be stacked on a single LLP); 3) if a participant qualifies for a legacy exemption and receives an initial allocation of QS in excess of the ownership cap, that participant's QS can be split during a transfer to prevent any recipient from exceeding a cap; and 4) QS can be separated from a processor QS permit in any

transfer of processor-held QS if necessary to prevent any transferee from exceeding an ownership or use cap.

#### *Ninety Day Transfer Window for Non-Exempt AFA LLP holders*

For LLP licenses associated with AFA non-exempt vessels, within 90 days of initial issuance of QS, the owner of the LLP license may transfer QS to another LLP license associated with an AFA non-exempt vessel. These QS transfers are subject to the QS ownership cap. This provision allows LLP license holders that engaged in AFA sideboard harvesting agreements during the qualifying period to transfer resulting QS back to the originating LLP license.

The transferor and the transferee must submit to NMFS a letter, signed by both persons, as evidence of their agreement to transfer the QS in this one-time opportunity. In the letter, they must explain how much QS will be transferred and to which LLP license or licenses. If only one party submits evidence of an agreement, the QS will remain with the LLP license to which it was initially assigned.

#### *F. QS Ownership Caps*

The PCTC program includes QS ownership caps to prevent a permit holder from acquiring an excessive share of the fishery as required under Magnuson-Stevens Act Section 303A(c)(5)(D). Individual ownership caps for both harvesters and processors are calculated using the “individual and collective rule” which means a person is deemed to own QS in the same percentage that person owns or uses the relevant license, permit, or vessel. If a person owns QS equal to the cap, NMFS will not approve a transfer of additional QS to that person. The PCTC Program also includes CQ use caps, described in sections IV.E and IV.F.

#### Harvester QS Ownership Cap—5 Percent

With the exception of persons qualifying for the legacy exemption, no person is permitted to individually or collectively own more than 5 percent of the aggregate QS

units initially assigned to eligible LLP licenses. The number of QS units is based on the PCTC Program official record. When QS is transferred, the person receiving the transfer is prohibited from holding or using QS over the 5 percent cap. This QS ownership cap limits the amount of QS assigned to an LLP license that can be held or controlled by a single entity. Processor QS does not count toward this ownership cap.

#### Processor QS Ownership Cap—20 Percent

With the exception of persons qualifying for the legacy exemption, no person is permitted to individually or collectively own more than 20 percent of the aggregate QS units initially assigned to QS permits held by eligible processors. Processor QS ownership caps are necessarily higher than harvester-held QS caps because the total number of eligible processors is significantly less than the number of harvesters. This cap is applied at the aggregate company or firm level (not the individual facility level). The processor QS ownership cap limits the amount of processor-held QS that can be held or controlled by a single entity.

#### Legacy exemption from the ownership caps

Under the PCTC Program, persons over the cap at the time of QS issuance are granted non-transferable legacy exemptions. Because the ownership caps fall well short of excessive shares in the fishery and allocating QS based on status quo levels of participation would not result in any participant holding an excessive share of limited access privileges, the Program grants legacy exemptions to participants whose initial QS allocations exceed the ownership caps. The legacy exemptions are intended to preserve stability in the fishery rather than force longtime participants to divest and reduce their reliance on the fishery. However, legacy exemptions are unique to persons receiving initial QS allocations and cannot be transferred. All future purchasers of QS would be subject to the ownership caps.

#### *G. Transferring QS in Excess of the Ownership Caps*



NMFS will not approve transfers of an LLP license with QS or a PCTC Program QS permit if the transfer would cause a person to exceed the 5 percent harvester QS ownership cap or the 20 percent processor QS ownership cap.

For LLP licenses and PCTC Program QS permit holders that are initially issued QS greater than the ownership cap (*i.e.*, for persons granted a legacy exemption from the ownership cap), the LLP license holder or QS permit holder may sever the amount of QS over the cap from the permit (and, once severed, transfer to one or more buyers) at the time of transfer. This provision allows the transfer of an LLP license or PCTC Program QS permit subject to a legacy exemption without the transferee exceeding a QS ownership cap. In addition, for QS assigned to a processor holding a PCTC Program QS permit—even if the transferor does not hold QS in excess of any cap—QS can be divided or transferred separately from that processor permit if a sale will otherwise result in the transferee exceeding an ownership cap.

If a QS holder has a legacy exemption from the QS ownership cap, NMFS will not approve a QS transfer to that person unless and until that person's holdings of QS are reduced to an amount below the QS ownership cap.

#### **IV. PCTC Program Cooperatives**

The PCTC Program is a cooperative-based program that requires harvesters to join a cooperative each year and processors to associate with a cooperative each year to benefit from QS holdings. NMFS will issue cooperatives annual CQ derived from the QS held by the harvesters that join the cooperative and associated processors. Under the Program, cooperative members are expected to coordinate their fishing operations, potentially reduce operational expenses, and increase the quality and revenue from the product, among other benefits.

##### *A. Requirements for Forming a Cooperative*

Under the PCTC Program, forming a cooperative requires at least three LLP licenses with QS. Annually, each cooperative must associate with at least one permitted processor. There is no limitation on the number of LLP licenses that may join a single cooperative, the number of processors a cooperative can associate with, or on the amount of QS a single cooperative can control. There is also no limit on the number of cooperatives that may form, but each LLP license may only be assigned to one cooperative. A person may hold multiple LLP licenses, meaning that an individual who holds three or more LLP licenses may form a cooperative in association with a processor.

An LLP license holder may change cooperatives and processor associations may change annually without penalty. However, an LLP license holder with QS may not change cooperatives and cooperatives may not change their processor associations during the PCTC Program fishing season. If an LLP license is sold or transferred during the season, it will remain with the cooperative until the end of the season. Inter-cooperative formation is allowed and an inter-cooperative agreement (see section IV.B) is required to implement the AI set-aside and to allow for efficient transfer of CQ or PSC limits between cooperatives.

NMFS will issue annual CQ to each cooperative based on the aggregate QS held by all cooperative members and associated processors. CQ constitutes an exclusive harvest privilege for the A and B seasons. NMFS will issue CQ by season and rely on the cooperatives to ensure the seasonal limits are not exceeded. Any unused A season CQ may be harvested during the B season. Cooperative members will determine their own harvest strategy, including which vessels can harvest the CQ.

CQ is not designated for the BS or AI subareas separately, but may be harvested from either area because the non-CDQ Pacific cod sector allocations are BSAI wide. If the non-CDQ Pacific cod TAC is or will be reached in either the BS or the AI subareas, NMFS will prohibit non-CDQ directed fishing for Pacific cod in that subarea as provided

at § 679.20(d)(1)(iii). However, NMFS will annually establish a separate AI DFA to support the calculation of the AI set-aside. For more information, see Section VI of this preamble. Under certain conditions, cooperatives would be required to collectively set aside 12 percent of the A season CQ for delivery to an AI shoreplant as described further under the AI Community Protections section below.

Cooperatives are limited in the manner in which they distribute CQ derived from processor-held QS for harvest by cooperative vessels. To address vertically integrated companies where a processing company may also own LLP licenses or CVs within a cooperative, CQ derived from processor-held QS must be divided among cooperative harvesting CVs proportionately to the QS attached to LLP licenses on board the CVs. In other words, a cooperative should not allow a CV or LLP license owned by a processor to harvest a greater proportion of the CQ resulting from processor-held QS than the LLP license will have brought into the cooperative absent any processor-held QS. Each cooperative will monitor this provision and include reporting on harvest of CQ resulting from processor-held QS in the PCTC Program cooperative annual report to the North Pacific Fishery Management Council (Council).

*B. Application for PCTC Program Cooperative Quota (CQ)*

All participants in the Program must organize into cooperatives, and the cooperative must submit a complete Application for PCTC Program CQ prior to the November 1 deadline each year to receive an annual CQ permit. If the cooperative fails to submit a timely application for CQ, NMFS will not issue CQ to the cooperative for that fishing year.

NMFS will process the application for CQ and, if approved, issue a CQ permit and apportioned amounts of annual crab PSC and halibut PSC limits to the cooperative. NMFS will use these applications to issue CQ permits, establish annual cooperative accounts for catch accounting purposes, and identify specific harvester vessels for each

cooperative. As with other LAPPs, the information received in this application is annually used to review ownership and control information for various QS holders to ensure that QS and CQ use caps are not exceeded. Processors that receive deliveries of CQ but do not hold a QS permit do not need to be listed on the application for CQ.

The Application for PCTC Program CQ is available on the NMFS Alaska Region website and may be submitted electronically through the NMFS online system or the NMFS Alaska Region website. The following list summarizes the information that is required:

- PCTC Program LLP license identification numbers;
- Processor-held PCTC Program QS permit number(s) and name of the processor that holds that each QS permit;
- PCTC Program QS ownership documentation;
- PCTC Program cooperative business address or identifier identification;
- Members of the PCTC Program cooperative and the associated processor that holds a QS permit;
- Trawl vessel identification, including the name(s) and USCG documentation number of vessel(s) eligible to harvest the CQ issued to the PCTC Program cooperative;
- A copy of the business license issued by the state in which the PCTC cooperative is registered as a business entity;
- A copy of the articles of incorporation or partnership agreement of the PCTC Program cooperative;
- A list of the names of all persons, to the individual level, holding an ownership interest in the LLP licenses that join the cooperative and the percentage ownership each person and individual holds in each LLP license;

- A list of trawl CVs eligible to harvest a portion of that cooperative's CQ;
- A copy of the cooperative agreement signed by the members of the PCTC Program cooperative, which must include, at a minimum, the following terms: 1) QS holders affiliated with processors cannot participate in price setting negotiations except as permitted by antitrust law; 2) monitoring provisions, including sideboard protections in the GOA, sufficient to ensure compliance with the PCTC Program; and 3) a provision that specifies the obligations of PCTC QS holders who are members of the cooperative to ensure the full payment of cost recovery fees that may be due;
- A copy of the inter-cooperative agreement that provides the plan for coordinating harvest and delivery of the AI CQ set-aside;
- Designated representative and cooperative members' signatures and certification; and
- Authorization for the designated representative to act on behalf of the cooperative to complete the application.

### *C. Issuing PCTC CQ*

NMFS will review the CQ applications for accurate information, including cooperative and inter-cooperative agreements, ownership and use caps, and payment of any fees, including cost recovery. If approved, NMFS will issue a CQ permit to the cooperative. NMFS will issue CQ permits after the annual harvest specifications are recommended by the Council for the upcoming year. Permits will generally be issued in early January for the fishing year starting January 20. The CQ permit will list the metric tons of Pacific cod by A and B season that the cooperative may harvest, the metric tons of apportioned halibut PSC, and the number of each species of crab PSC that the cooperative may use during the fishing year.

NMFS will issue CQ for A and B seasons separately, with total CQ issued to all cooperatives in each season equal to the DFA. The remaining TAC for the trawl CV sector will be the incidental catch allowance (ICA) for Pacific cod caught as bycatch in other fisheries, such as pollock.

*D. Processors in Cooperatives*

A person holding a PCTC Program QS permit is required to associate with a cooperative to use their QS. This creates an economic incentive for the processors that hold QS to either associate with a cooperative on an annual basis or sell their permit to a processor that will associate with a cooperative. Processor-held QS that is not associated with a specific cooperative will be distributed as CQ among all the cooperatives that form in a given year in the same proportion as the CQ assigned to each cooperative. A cooperative may associate with a processor that does not hold QS.

*E. Vessel CQ Use Cap – 5 percent*

A vessel use cap restricts the CQ that can be consolidated and harvested by one vessel during the year. The PCTC Program includes a 5 percent vessel use cap for CVs. With the exception of persons qualifying under the legacy exemption, no vessel is permitted to harvest more than 5 percent of the annual CQ issued in the fishery. A vessel designated on an LLP license that receives QS in excess of the QS ownership cap at the time of QS issuance will be granted a legacy exemption from the vessel use cap because that vessel would have harvested over 5 percent of the total A and B season trawl CV sector Pacific cod allocation during the qualifying years. The legacy exemption applies to the vessel designated on an LLP license that yields more than 5 percent of the QS at the time of initial allocation. This legacy exemption is not transferable if the LLP license is transferred to a new owner.

*F. Processor CQ Use Cap – 20 percent*

A processor's CQ use cap protects against excessive consolidation of processing activity by limiting a person (*i.e.*, company or firm) to processing no more than 20 percent of the annual CQ using the individual and collective rule, with the exception of persons qualifying under the legacy exemption. The processor CQ use cap is calculated based on the total CQ issued under the PCTC Program and not just QS initially issued to processors. This ensures that a processing company is limited to processing a specific percentage of the total PCTC Program allocation. A person over the cap at the time of QS issuance—*i.e.*, a processor that, on average, processed more than 20 percent of the total A and B season trawl CV sector Pacific cod allocation during the qualifying years—is granted a non-transferable legacy exemption.

*G. CQ and PSC Transfers*

Under this Program, a cooperative may transfer all or part of its CQ to another cooperative for harvest subject to the limitations imposed by the use caps. Transfers of CQ are for a single year's annual allocation. The underlying QS remains with the LLP license. This CQ transfer provision provides flexibility for cooperatives to transfer Pacific cod for harvest or PSC to support cooperative fishing. The ability to transfer PSC allows cooperatives to account for unforeseen circumstances, but the incentive to avoid hitting a cooperative PSC limit remains because of the cost of acquiring PSC from another cooperative.

This final rule allows post-delivery transfers of CQ, but all transfers must be completed prior to August 1, after the close of the B season. At the end of the fishing season, remaining CQ may be consolidated into fewer cooperatives (and for harvest by fewer vessels) due to the requirement that a vessel may not begin a fishing trip without unharvested CQ. Consolidation of CQ to a smaller number of cooperatives toward the end of the fishing season facilitates "sweep up" trips to complete the season's harvests.

To transfer CQ and associated PSC limits between cooperatives, the cooperative must use the NMFS online system on the NMFS Alaska Region website, which allows for automated review and approval of transfer requests within use cap constraints. NMFS will not approve a CQ transfer if the transfer would result in a CV exceeding the use cap. A transfer of CQ is not effective until approved by NMFS.

#### *H. Cooperative Reports*

Under the PCTC Program, the Council has requested cooperatives to provide voluntary annual reports. Consistent with other cooperative programs developed by the Council, these reports shall include specific information on the structure, function, and operation of the cooperatives.

Each year, the Council will receive reports outlining the cooperatives' performance at one of its regularly scheduled meetings. These reports will be used by the Council and NMFS to ensure the program is functioning as intended and to solicit timely information on issues that may need to be addressed by the Council. The Council requested that each cooperative report include information on CQ leasing activities and any penalties issued, harvest of CQ resulting from processor-held QS, cooperative membership, cooperative management, and performance (including implementation of the AI CQ set-aside when in effect).

#### **V Prohibited Species Catch Limits**

NMFS will annually apportion halibut and crab PSC limits to PCTC Program cooperatives based on the percentage of total CQ allocated to their cooperative. During the A and B seasons, NMFS will monitor PSC use at the sector level, and cooperatives will manage PSC use at the cooperative level. Cooperative vessels are prohibited from fishing under the Program if a halibut PSC limit is reached for the cooperative or from fishing in a crab bycatch limitation zone if a crab PSC limit is reached in that relevant



area. PSC limits may be transferred between cooperatives using the NMFS online system to cover any overages or to allow a cooperative to continue harvesting Pacific cod.

*A. Halibut PSC*

Annually, NMFS will apportion the halibut PSC limit assigned to the BSAI trawl limited access sector Pacific cod fishery to the trawl CV and AFA CP sectors; 98 percent will be apportioned to the trawl CV sector and 2 percent will be apportioned to AFA CP sector. The specific percentage of the total halibut PSC limit assigned to the trawl limited access sector may change annually. NMFS will then apportion the halibut PSC limit to the trawl CV sector for the A, B, and C season. Of the halibut PSC limit apportioned to the trawl CV sector, 95 percent will be available for the PCTC Program in the A and B seasons and 5 percent is available for the C season.

To implement the halibut PSC reduction under the Program, NMFS will annually apply a fixed percentage reduction to the A and B season PSC apportionment derived from the overall trawl CV sector halibut PSC apportionment. The total halibut PSC reduction under the Program is 25 percent, which will be phased in over two years. In the first year of the Program, NMFS will apply a 12.5 percent reduction to the A and B season trawl CV sector halibut PSC apportionment in the annual harvest specifications after the Council recommends and NMFS approves the BSAI trawl limited access sector's PSC limit apportionments to fishery categories. In the second year of the Program and every year thereafter, NMFS will apply a 25 percent reduction to the A and B season trawl CV sector halibut PSC apportionment. Any amount of the PCTC Program PSC limit remaining after the B season will be reallocated to the trawl CV limited access fishery in the C season. Because the annual halibut PSC limit for the Program is not a fixed amount established in regulation and, instead, is determined annually through the harvest specification process, NMFS must apply the 25 percent reduction to the A and B

season apportionment of the trawl CV sector apportionment to implement the overall PSC reductions under the Program.

*B. Crab PSC*

The annual crab PSC limits available to the BSAI trawl limited access sector Pacific cod fishery category will be apportioned between the trawl CV sector and the AFA CP sector based on the proportion of BSAI Pacific cod allocated to the two sectors: 90.6 percent to BSAI trawl CVs and 9.4 percent to AFA CPs. Of the crab PSC limit apportioned to the trawl CV sector, 95 percent will be available for the PCTC Program (A and B seasons) and 5 percent will be available for the C season. NMFS will then reduce the crab PSC limits by 35 percent during the A and B seasons for the PCTC Program. As with halibut PSC, any amount of the PCTC Program PSC limit remaining after the B season will be reallocated to the C season trawl CV limited access fishery.

**VI AI Community Protections**

Under the PCTC Program, cooperatives are required to collectively set aside an amount of CQ equal to 12 percent of the overall A season CQ for delivery to an Aleutian Islands shoreplant (AI CQ set-aside) during years in which an AI community representative notifies NMFS of their intent to process Pacific cod. The term “Aleutian Islands shoreplant” means a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska. The rationale and need for this provision is explained in detail in the preamble to the proposed rule and in Section 2.9.6 of the Analysis prepared for this action (see **ADDRESSES**).

The AI CQ set-aside provides additional incentives for harvesters to deliver AI Pacific cod to an Aleutian Islands shoreplant. The AI CQ set-aside is designed to provide benefits and stability to fishery-dependent fishing communities in the AI when a shoreplant is operating and is responsive to lingering effects caused by changes in management regimes such as rationalization programs. Without the AI CQ set-aside, AI

harvesters, shoreplants, and fishing communities could be preempted from the fishery by the offshore sector. The AI CQ set-aside is especially beneficial to AI communities in low TAC years when harvest can otherwise fully occur in the BS, preventing any cod deliveries in the AI.

This final rule does not affect any sector's BSAI Pacific cod allocation or the CDQ Pacific cod allocation in the AI. Non-CDQ sectors continue to receive annual allocations as established under Amendment 85 to the BSAI FMP (72 FR 50787, September 4, 2007). The performance of this AI CQ set-aside provision will be evaluated in the periodic reviews of the Program.

*A. Managing the AI CQ Set-Aside*

The AI CQ set-aside provision for AI processors requires cooperatives to set-aside an amount of annual CQ for delivery to an Aleutian Islands shoreplant if the city of Adak or Atka files a notice of intent to process that year. The AI CQ set-aside is in effect and available for delivery to an Aleutian Islands shoreplant during the A and B seasons unless all notices of the intent to process are withdrawn by the AI communities. If all notices of intent to process are withdrawn, any remaining portion of the AI CQ set-aside will be available for cooperatives to deliver to any processor.

Cooperatives will manage the AI CQ set-aside through an inter-cooperative agreement. This agreement will ensure annual coordination between the cooperatives and shoreplants that are operating in the AI and guarantee that the AI CQ set-aside is available for delivery to the Aleutian Islands shoreplants. This reduces the management burden on NMFS and relies on the cooperatives to organize annual fishing activity.

Each year, the cooperative must submit a copy of the inter-cooperative agreement with the Application for PCTC Program CQ to NMFS that describes 1) how the AI CQ set-aside would be administered by the cooperatives, 2) how the cooperatives intend to harvest the AI CQ set-aside, and 3) how cooperatives would ensure that CVs less than 60

ft (18.3 m) LOA assigned to an LLP license with a transferable AI endorsement have the opportunity to harvest 10 percent of the AI CQ set-aside for delivery to an Aleutian Islands shoreplant. Each cooperative is required to provide the cooperative's plan for coordinating harvest and delivery of the AI CQ set-aside to an Aleutian Islands shoreplant regardless of whether that cooperative intends to harvest any amount of the AI CQ set-aside.

For the calendar year 2023, to provide for implementation of the Program during its first year, NMFS will allow each cooperative to submit the inter-cooperative agreement on or before December 31, 2023, after the November 1 deadline for the Application for PCTC Program CQ.

*B. Intent to Process and Eligibility for AI CQ Set-Aside*

This final rule allows the representative of the City of Adak or the City of Atka to submit an annual notice of intent to process PCTC Program Pacific cod in the upcoming fishing year to the NMFS Regional Administrator no later than October 15 of the year prior to fishing. Submission of the notice of intent by October 15 provides NMFS inseason management with the timely information it needs to manage the upcoming fisheries and notify the cooperatives that the AI CQ set-aside is in effect for the upcoming year. If neither Adak nor Atka submit a notice of intent to process by October 15, cooperatives are not required to set aside CQ for delivery to an Aleutian Islands shoreplant in the subsequent fishing season.

A city's notice of intent to process Pacific cod must contain the following information: date, name of city, a statement of intent to process Pacific cod, statement of calendar year during which the city intends to process Pacific cod, and the contact information for the city representative where the relevant shoreplant is located.

On or before November 30, the Regional Administrator will notify the representative of Adak or Atka confirming receipt of their notice of intent to process

Pacific cod. Shortly after receipt of a notice of intent to process Pacific cod, NMFS will announce through notice in the **Federal Register** whether the AI CQ set-aside is in effect for the upcoming fishing year.

Even if Adak or Atka is uncertain at the time the notice of intent is due as to whether an Aleutian Islands shoreplant will be operational, there would be no penalty to Adak or Atka or the shoreplant for stating their intention to process but then later withdrawing that notice of intent. Adak or Atka would be allowed to withdraw their notice of intent at any time after submitting it to NMFS. In the event that both Adak and Atka withdraw their notices of intent to process during the A or B season, NMFS will publish a notice in the **Federal Register** announcing that the AI CQ set-aside is no longer in effect and remove the delivery requirement. The remaining portion of the AI CQ set-aside would be available for harvest without restrictions on delivery location.

NMFS will monitor the implementation of the AI CQ set-aside throughout the A and B seasons. NMFS will consider the number and frequency of deliveries to Aleutian Islands shoreplants as well as the season timing and remaining CQ to be harvested. As soon as practicable, if the Regional Administrator determines that Aleutian Islands shoreplants authorized under the PCTC Program will not process the entire AI set-aside, the Regional Administrator may publish a notice in the **Federal Register** to remove the delivery requirement for some or all of the projected unused AI CQ set-aside.

### *C. AI DFA*

The Council and NMFS annually establish separate OFLs, ABCs, and TACs for the AI and BS subareas; however, the non-CDQ sector allocations (including the PCTC Program allocations) remain BSAI-wide allocations. Each year, during the annual harvest specifications process described at § 679.20(c), NMFS will specify an ICA and a DFA derived from the AI non-CDQ TAC. The amount of AI Pacific cod that NMFS estimates will be taken as incidental catch when directed fishing for non-CDQ groundfish other

than Pacific cod in the AI subarea will be the AI ICA. The amount of the AI ICA may vary from year to year, and in future years, NMFS will specify the AI ICA in the annual harvest specifications based on recent and anticipated incidental catch of AI Pacific cod in other AI non-CDQ directed groundfish fisheries. The amount of the AI non-CDQ TAC remaining after subtraction of the AI ICA will be the AI DFA.

NMFS will specify the AI ICA and DFA so that NMFS can clearly establish the amount of the AI CQ set-aside. It will also aid the public in knowing how much of the AI non-CDQ TAC is available for directed fishing prior to the start of fishing to aid in the planning of fishery operations.

The amount of the annual AI CQ set-aside for delivery to an Aleutian Islands shoreplant is equal to the lesser of either the AI Pacific cod non-CDQ DFA or 12 percent of the A season CQ and is in effect during the A and B seasons. When the AI CQ set-aside is equal to the AI DFA, directed fishing for Pacific cod in the AI may be conducted only by PCTC Program vessels that deliver their catch of AI Pacific cod to an Aleutian Islands shoreplant. However, if the AI DFA is greater than the AI CQ set-aside (and thus the set-aside is equal to 12 percent of the A season CQ), the difference between the AI DFA and the AI CQ set-aside may be available for directed fishing by all PCTC Program vessels with no restrictions on where that CQ must be delivered and processed.

## **VII C Season Limited Access Fishery**

The C season apportionment—which is 15 percent of the total annual allocation to the BSAI Pacific cod trawl CV sector—remains a limited access fishery open to all trawl CVs with LLP license endorsements to harvest Pacific cod in the BS and/or AI with trawl gear. The C season limited access fishery, which occurs June 10 through November 1, continues to be managed as it is under status quo conditions and remains unchanged by this final rule.

Although directed fishing for Pacific cod in the C season is an important part of the annual fishing plan for some trawl CVs, most of the trawl CV C season catch is incidental to other directed fishing. In the fall, as directed fishing for Pacific cod that opens on September 1 for the hook-and-line and pot sectors progresses, NMFS estimates any BSAI trawl CV C season allocation, including any unused amounts of PCTC Pacific cod and PSC limits rolled over to the C season, will be available for reallocation to other sectors. In some years, projected unused amounts of the trawl CV Pacific cod TAC will be available to reallocate, and NMFS may make a reallocation in late September or October. In other years, there may not be any projected unused amounts, and NMFS will wait until after directed fishing for pollock and Pacific cod by the trawl CV sector closes. In that circumstance, reallocations will occur in November or December. When the BS and AI Pacific cod TACs are higher, trawl CV C season Pacific cod may go unused and can be reallocated to other sectors. For projected unused PSC limits, the Regional Administrator may reallocate a portion of crab PSC or halibut PSC to Amendment 80 cooperatives if the amount assigned to the BSAI trawl limited access sector is not projected to be harvested or used (§ 679.91(f)).

To help ensure efficient allocation management, NMFS may rollover any unused portion of a seasonal apportionment from any non-CDQ fishery sector (except the jig sector) to that sector's next season during the current fishing year (§ 679.20(a)(7)(iv)(B) and (C)).

Under the PCTC Program, the cooperatives are granted harvest privileges in the A and B seasons of the BSAI Pacific cod fishery. Those harvest privileges alter the reallocation structure from the trawl CV sector prior to the C season since rollovers of unused CQ and PSC limits to other sectors will not occur until the close of the annual PCTC fishing year (the end of the B season).

## **VIII Additional PCTC Program Provisions**

*A. Sideboard Limits in the PCTC Program*

The PCTC Program modifies existing GOA sideboard limits and associated GOA halibut PSC limits for non-exempt AFA vessels and LLP license holders and closes directed fishing where sideboard limits are too small to support a directed fishery. All GOA non-exempt AFA CVs and associated AFA LLP licenses are sideboarded in aggregate for all GOA groundfish fishing activity and for GOA halibut PSC based on their GOA catch history during the qualifying period, except when participating in the Central Gulf of Alaska (CGOA) Rockfish Program. The existing sideboards apply to non-exempt AFA vessels as defined at § 679.64(b)(2). The PCTC Program modifies the calculation of the existing sideboard limits for these non-exempt AFA CVs based on the GOA catch history. LLP licenses associated with non-exempt AFA CVs are also subject to the revised sideboard limits regardless of which vessel is named on the LLP.

GOA sideboards are currently calculated for non-exempt AFA CVs based on the ratio of catch to the TAC during the years 1995-1997. The PCTC Program modifies the calculation of the sideboard ratios for non-exempt AFA CVs that will be used in the annual GOA harvest specifications, looking at the ratio of catch to the TAC in the qualifying years of 2009-2019 (as shown in Table 2).



**Table 2–GOA groundfish sideboard ratios (aggregate retained catch/TAC) for all non-exempt AFA CVs and LLP licenses based on the PCTC Program qualifying period**

Target Species	Apportionments by season/gear	Area/component	Existing Sideboard Ratio	New Sideboard Ratio
Pollock	A Season Jan 20 - May 31	Shumagin (610)	0.6047	0.057
		Chirikof (620)	0.1167	0.064
		Kodiak (630)	0.2028	0.091
	B Season Sep 1 - Nov 1	Shumagin (610)	0.6047	0.057
		Chirikof (620)	0.1167	0.064
		Kodiak (630)	0.2028	0.091
Pacific cod	Annual	WYK (640)	0.3495	0.026
		SEO (650)	0.3495	0.000
	A Season Jan 1 - Jun 10	W	0.1331	0.009
		C	0.0692	0.011
	B Season Sept 1 - Dec 31	W	0.1331	0.009
		C	0.0692	0.011
Shallow-water flatfish	Annual	W	0.0156	0.000
		C	0.0587	0.011
Deep-water flatfish	Annual	C	0.0647	0.002
		E	0.0128	0.000
Rex sole	Annual	C	0.0384	0.014
Arrowtooth flounder	Annual	C	0.028	0.011
Flathead sole	Annual	C	0.0213	0.007
Pacific ocean perch	Annual	E	0.0466	0.001

In addition, the ratio used to apportion GOA halibut PSC limits is modified and the five seasonal apportionments based on that sideboard ratio is reduced to a single aggregate annual amount. Providing an aggregate annual halibut PSC limit provides greater flexibility for the AFA vessels and LLP licenses to assign halibut PSC limits to those GOA groundfish sideboard fisheries that have the greatest value. Table 3 shows the new aggregate GOA halibut PSC limit ratio based on catch history during the qualifying period 2009-2019 that will be used annually in the GOA harvest specifications table after the effective date of this final rule.

**Table 3–GOA Halibut PSC Limit Ratio Aggregated at the Season and Complex Level for All AFA Non-Exempt CVs and Associated LLP Licenses Under the Qualifying Period**

GOA Halibut PSC Limit	Qualifying Period (2009-2019)
PSC Limit Ratio	.072

Additionally, this final rule closes directed fishing to all GOA non-exempt AFA CVs and LLP licenses for the following species categories: Southeast Outside district of the Eastern GOA pollock, Western GOA shallow-water flatfish, Central and Eastern GOA deep-water flatfish, Central GOA dusky rockfish, and Eastern GOA and Central GOA Pacific ocean perch. NMFS will no longer publish AFA Program sideboard limits for these specific species or species groups in the **Federal Register** as part of the annual groundfish harvest specifications and instead this final rule specifies in regulation at § 679.64(b)(4)(ii) that directed fishing for these species is closed to non-exempt AFA CVs.

The Council directed cooperatives to 1) ensure GOA AFA exempt and non-AFA CVs and CVs assigned to under 60 ft (18.3 m) LLP licenses with AI transferrable endorsements do not lease their CQ as a condition of benefiting from a GOA sideboard exemption, 2) implement a penalty structure for violations, and 3) report leasing activities and penalties issued in the cooperative's annual report to the Council. The cooperative can allow leasing for 1) AFA GOA-exempt CVs, non-AFA CVs, and CVs assigned to under 60 ft (18.3 m) LOA LLP licenses with a transferable AI endorsement with less than 300 metric tons of average annual qualifying catch history, and 2) CVs assigned to the LLP license that only fishes in the CGOA Rockfish Program during the calendar year. Additionally, NMFS requires cooperatives to include information about the cooperative's plan to monitor CQ leasing activities, including into GOA fisheries, in the Application for PCTC Program CQ.

#### *B. Changes to Existing BSAI Sideboard Limits for AFA CVs*

This final rule revises the BSAI Pacific cod and halibut PSC sideboard limits for AFA trawl CVs specified at § 679.64(b)(4)(i) and in Table 40 to part 679 to only apply in

the C season. The BSAI Pacific cod sideboard limit is no longer necessary in the A and B seasons because directed fishing in the BSAI for Pacific cod is now managed under the PCTC Program. NMFS removes the halibut PSC sideboard limits for AFA trawl CVs because the PCTC Program establishes lower PSC limits for PCTC Program participants. This final rule does not change the BSAI crab PSC sideboard limit for AFA trawl CVs specified at § 679.64(b)(4)(i) and Table 41 to part 679.

### *C. At-Sea Processing Sideboard Limit*

This final rule implements a sideboard limit on the amount of CQ that can be processed by a CP designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement. This sideboard limit is assigned to each LLP license with a BSAI Pacific cod trawl mothership endorsement that authorizes the CP to act as a mothership in the BSAI Pacific cod fishery as listed in Table 57 to part 679. The Council recommended that each eligible CP acting as a mothership can process up to 125 percent of the eligible CP's processing history during the qualifying years (with no drop year). This at-sea processing sideboard limit is permanently attached to the associated LLP license and applies to the processing activity of any associated vessel.

The data used to calculate the at-sea processing sideboard limits and the resulting sideboard limit assigned to each LLP license is confidential. Each LLP license holder is responsible for coordinating with any cooperative to ensure the applicable processing limit is not exceeded. The at-sea processing sideboard limit is not an allocation and the PCTC Program does not require that this amount be delivered to CPs acting as a mothership, but it provides an upper bound on how much CQ may be delivered.

The at-sea processing sideboard limit is consistent with Amendment 120 (84 FR 70064, December 20, 2019) that restricted the number of CPs that are eligible to operate as a mothership receiving and processing Pacific cod from CVs in the BSAI non-CDQ Pacific cod directed fishery using trawl gear. Under Amendment 120, NMFS issued a

BSAI Pacific cod trawl mothership endorsement to two LLP licenses but did not include a limit on the amount of BSAI Pacific cod that can be processed because it was not thought that any one processor could increase their capacity significantly under the LLP management system. However, under this rationalized, slower paced, cooperative fishing Program, the Council and NMFS determined it may be possible for continued mothership processing growth beyond historical patterns, so the Council recommended that a processing limit be established for each LLP license listed in Table 57 to part 679. For more information on processing limits for the mothership sector, please see section 2.9.5 of the Analysis (see **ADDRESSES**).

Annually, NMFS will calculate the at-sea processing sideboard limit, expressed as a percentage of the aggregate CQ that would apply to each LLP license with a BSAI Pacific cod trawl mothership endorsement and notify the LLP license holder upon issuance of initial allocations. This final rule does not change the regulations pertaining to the transfer of LLP licenses as specified at § 679.4(k)(7) nor the process to change the designated vessel on an LLP license as specified at § 679.4(k)(7)(vii). Each LLP license subject to this at-sea processing sideboard limit is prohibited from exceeding the processing limit as specified in regulations at § 679.133(b)(2).

#### *D. Cost Recovery*

The PCTC Program is a LAPP established under the provisions of Section 303A of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires that NMFS collect fees from limited access privilege holders to cover the actual costs of management, data collection and analysis, and enforcement activities associated with LAPPs. Cost recovery fees may not exceed three percent of the ex-vessel value of the fish harvested under the LAPP. NMFS will assess a fee on the ex-vessel value of PCTC Program Pacific cod harvested by cooperatives in the BSAI. Halibut and crab PSC are not subject to a cost

recovery fee because PSC cannot be retained for sale and, therefore, does not have an ex-vessel value.

The annual PCTC Program cost recovery process builds on other existing cost recovery requirements implemented under other programs. NMFS annually receives information used to calculate Pacific cod standard prices in the existing BSAI Pacific cod Ex-vessel Volume and Value Report, which is submitted in early November of each year. NMFS will use this existing data source to calculate standard prices used to determine the annual PCTC Program fishery value, which will be used to calculate the annual PCTC Program cost recovery fee percentage. NMFS will begin tracking PCTC Program management costs upon the effective date of this final rule. PCTC Program landings will be made in the A and B seasons, which extends from January 20 to June 10.

The following is an example to illustrate the data NMFS will use in the annual PCTC Program cost recovery process using the year 2025. The PCTC Program fishing year will have landings subject to cost recovery starting on January 20, 2025 and ending on June 10, 2025. NMFS will calculate standard prices derived from the volume and value report submitted by November 10, 2024 for landings made in 2024. Finally, NMFS will use the management costs from July 2024 through June 2025 to calculate the 2025 fee percentage. By no later than July 31, 2025, the Regional Administrator will publish a notice announcing the standard prices and fee percentage in the **Federal Register** and send invoices to cooperatives.

NMFS will send each cooperative a fee liability letter to inform each cooperative of the fee percentage applied to the current year's landings and the total amount due (fee liability). The letter will include a summary explaining the fee liability determination including the current fee percentage and details of CQ pounds debited from CQ allocations by permit, date, and prices.

Fees must be paid by August 31 of each year. NMFS requires that all payments be submitted electronically in U.S. dollars through the NMFS Alaska Region website. Instructions for electronic payment are made available on the payment website and through a fee liability summary letter NMFS will mail to the cooperative.

Each cooperative is responsible for paying cost recovery fees assessed on cooperative landings. Failure to pay cost recovery fee liabilities on time will result in NMFS not approving a cooperative's application for a CQ permit the following year until full payment of the fee liability is received by NMFS. NMFS will not issue a CQ permit until NMFS receives a complete application for CQ and confirmation of the full payment of any cost recovery fee liability. Communication with NMFS using the contact information provided in the fee liability letter will provide ample opportunity for cooperative to reconcile accounts. However, if the account is not reconciled and the individual does not pay, NMFS will send an IAD to the cooperative. The IAD would state that the cooperative's estimated fee liability due from the cooperative had not been paid. The cooperative may appeal the IAD. The appeals process is described at § 679.43. A cooperative who appeals an IAD would not receive a new CQ permit unless the appeal was resolved in the applicant's favor.

The agency may pursue collection of the unpaid fees if the formal determination is not appealed and the account remains unpaid or under-paid 30 days after fees are due (August 31 of each year). The Regional Administrator will continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

#### *E. Monitoring Provisions*

This final rule establishes requirements for observer coverage and other monitoring and enforcement provisions to ensure that fleet-wide harvests under the PCTC Program are effectively monitored and that catches remain within allocations. These requirements include full observer coverage for CVs harvesting CQ (except for

CVs delivering unsorted codends to motherships, as explained below) and requirements for communications equipment to facilitate observer data entry and electronic transmission to NMFS. These monitoring provisions are designed to maximize the quality of data used to estimate PCTC Program catch and bycatch, including PSC. Shoreside processors are required to report landings data to NMFS electronically through eLandings. Estimates of at-sea discards and PSC would be derived solely from observer data.

All vessels used to harvest CQ are required to carry equipment to facilitate at-sea electronic transmission of observer data to NMFS. This final rule modifies regulations at § 679.51(e)(1)(iii)(A) to explicitly require vessel operators to allow an observer to use the vessel's existing communications equipment for confidential entry, transmission, and receipt of work-related messages.

All vessels participating in the PCTC Program are required to provide an onboard computer that meets minimum specifications for use by an observer. Currently, NMFS uses and installs custom software (ATLAS) on the vessel's computer, and this software application is used by observers to enter the data they collect. The ATLAS software contains business rules that perform many quality control and data validation checks automatically, which dramatically increases the quality of the preliminary data. After the observer data are entered into the ATLAS software, they are transmitted to NMFS.

At-sea transmission of observer data improves data quality. To minimize impacts to small vessel operators, the requirements for non-AFA trawl CVs to install equipment necessary to facilitate at-sea observer data transmission become effective three years after the effective date of this final rule. Though the installation of equipment to facilitate at-sea data transmission on non-AFA vessels will not be required immediately upon implementation of the Program, this final rule clarifies that if a vessel already has equipment capable of facilitating at-sea data transmission, that equipment must be made

available to the observer for use in transmitting work-related messages including collected data.

This final rule requires motherships receiving unsorted codends from a PCTC Program CV to comply with catch monitoring requirements specified at § 679.93(c) for Amendment 80 vessels and CPs. These requirements are already applicable to Amendment 80 CPs acting as motherships and would continue to apply when acting as a mothership to process PCTC Program CQ. This final rule does not alter existing observer coverage requirements for trawl CVs delivering unsorted codends to a mothership in the BSAI. A trawl CV delivering unsorted codends to a mothership is not required to carry an observer because the catch is not brought on board the CV and not available for observer sampling. Rather, the catch is sorted and sampled by observers aboard the mothership.

Motherships receiving deliveries from PCTC Program CVs are required to have at least two observers aboard the mothership, at least one of whom will be required to be endorsed as a lead level 2 observer. More than two observers are required to be aboard if the observer workload restriction would otherwise preclude sampling as required. All PCTC Program catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, must be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch made available for sampling by an observer.

This Program establishes catch monitoring requirements for all shoreside processors receiving deliveries from CVs harvesting PCTC Program CQ. All groundfish landings made to a shoreside processors must be sorted; weighed on a scale approved by the State of Alaska as described at § 679.28(c); and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

#### *F. PCTC Program Review*



The Council will review the PCTC Program five years after implementation to determine if the Program is functioning as intended, as required by the Magnuson-Stevens Act. This review and evaluation by the Council will include an assessment of the program objectives. Specifically, the Council will review whether the allocation of Pacific cod is fair and equitable given participation in the fishery, historical investments in and dependence upon the fishery, and employment in the harvesting and processing sectors. The Council will also assess performance of the Program based on changes in annual cooperative formation, changes in product value, the number and distribution of processing facilities, and stability or use of annual processor associations with harvesting cooperatives. The focus of these reviews will be the impact of this action on the harvesting and processing sectors, as well as on fishery dependent communities. The Council will also assess whether the needs for management and enforcement, as well as data collection and analysis, are adequately met.

### **Comments and Responses**

NMFS received 16 comment letters on the NOA and the proposed rule. NMFS has summarized and responded to the 55 unique comments below. The comments were from individuals, local government representatives, Alaska Native corporations, and industry participants including harvesters and processors.

#### *Comments in support*

Comment 1: Several commenters expressed support for Amendment 122 and timely implementation of the PCTC Program in 2024. The PCTC Program will maintain or improve harvesting and processing participation in the Pacific cod fishery, it provides fair and equitable allocation of QS to harvesters and processors. It will reduce environmental impacts of the fishery, and it will promote conservation and sustainability.

Response: NMFS acknowledges this comment.

Comment 2: This rule is important to recover and conserve our mammals. This rule will help ensure the productivity and sustainability of fisheries.

Response: NMFS acknowledges this comment.

Comment 3: Limiting the amount of Pacific cod that fisheries are allowed to harvest is good because it balances economics with the sustainability of the environment.

Response: NMFS specifies the OFL, ABC, and TAC for BSAI Pacific cod through the annual harvest specification process as further explained in Section I of this preamble. For Pacific cod, the harvest specifications establish separate OFLs, ABCs, and TACs for the BS subarea and the AI subarea of the BSAI. Allocations of Pacific cod to the CDQ Program and to the non-CDQ fishery sectors are further apportioned by seasons. The PCTC Program allocates the available Pacific cod to the various trawl harvesters during the A and B season; this action does not change the overall amount of Pacific cod that is expected to be harvested annually.

Comment 4: Amendment 122 and the efforts by the Council to establish the PCTC Program are supported because they recognize processing history as well as investments in the fishery and acknowledge what a shift a catch share program can have on relationships between harvesters and processors. The qualifying years are appropriate and were well-supported throughout the Council's lengthy process to establish Amendment 122. The commenter supports actions by the Council that do the least amount of harm to the overall participants in the BSAI cod fishery.

Response: NMFS acknowledges this comment.

### *Conservation*

Comment 5: Pelagic, or midwater, trawlers use nets within the water column between the surface and seabed. Pelagic trawling is considered more sustainable because of the belief that their nets do not make contact with the seabed, but pollock midwater trawlers make contact with the seabed 40-70 percent of the time they are completing a

trawl. The Council is focusing on Pacific cod because of the impact of benthic trawls (also known as nonpelagic or bottom trawls) on the seabed and non-target species without fully considering whether pelagic trawls in more ecologically sensitive areas may have a more significant overall impact.

Response: Under the PCTC Program, vessels will use nonpelagic trawl gear, as defined at § 679.2, to harvest CQ. Nonpelagic trawl gear—trawl gear that targets fish species near the ocean floor—is different than pelagic trawl gear, which targets fish species in the water column. This comment addresses management issues that are beyond the scope of Amendment 122 and this regulatory action. This action is not intended to modify authorized gear types, including nonpelagic trawl gear used in the PCTC Program, or address their use in sensitive areas. Modifications to authorized gear types or use in sensitive areas would need to be addressed in a separate regulatory action developed through the Council process. Section 3.1.2 of the Analysis states that previous analyses have found no substantial adverse effects to habitat in the BSAI caused by fishing activities. Any effects continue to be limited by the amount of the groundfish TACs and by the existing habitat conservation and protection measures. Overall, the combination of the direct, indirect, and cumulative effects on habitat for both living and non-living substrates, benthic biodiversity, and habitat suitability are not likely to be significant under this action.

Comment 6: It is important to understand the destruction of trawling despite its efficiency. Effort can be made to fish more sustainably. Trawling in Alaska should be done less in order to protect Pacific cod, other species, and the ocean floor.

Response: NMFS manages the BSAI Pacific cod fishery based on the best scientific information available. To ensure conservation of the resource, the status of the Pacific cod stock is reviewed by NMFS and the Council each year through a public scientific review process before the TAC is allocated. The Council and NMFS analyzed

the environmental impacts of Amendment 122 and concluded that it would not result in a significant impact on the human environment as presented in the Analysis and FONSI prepared for this action (see **ADDRESSES**). This action is not intended to modify authorized gear types.

*Quota Share for Harvesters and Processors*

Comment 7: In recommending Amendment 122 and this Program, the Council intended for NMFS to consider specific area endorsements on each LLP license at the time of harvest in determining how to attribute qualifying catch history to an LLP license in the situation when there were two or more LLP licenses associated with the vessel. The language in the proposed rule does not clearly indicate that only the LLP license with the appropriate area endorsement would receive the resulting qualifying catch history.

Response: NMFS agrees and clarifies that specific area endorsements are considered when determining how to attribute qualifying catch history to LLP licenses. In determining how to attribute catch history when two or more LLP licenses were associated with a vessel, NMFS considers the area endorsements on each of the LLP licenses at the time fishing occurred.

An LLP license will only be eligible for qualifying catch history in an area if it had the endorsement for that area at the time of harvest. In the event more than one LLP license associated with a vessel had the area endorsement for where the catch occurred, the vessel owner will decide how to assign QS to the LLP licenses. In the event only one LLP license associated with a vessel had the area endorsement for where the catch occurred, despite there being more than one LLP license associated with the vessel at the time fishing began, only the LLP license with the correct area endorsement will receive the resulting qualifying catch history. The vessel owner would not decide how this portion of the QS would be assigned between LLP licenses. For example, say a vessel had qualifying catch history in the BS and AI and was named on two LLP licenses at the

time the landing occurred. One LLP license had a BS endorsement and the other LLP license had BS and AI endorsements. In this scenario, fishing history in the BS would be considered shared catch between the two LLP licenses (because both LLP licenses had the appropriate endorsements authorizing the fishing activity) and fishing history in the AI is considered qualifying catch history only for LLP license with the AI endorsement.

Comment 8: NMFS should use “target” catch in the official record to determine initial QS issued to harvesters and processors.

Response: NMFS agrees. Under the PCTC Program, NMFS determines QS allocations based on legal landings of target Pacific cod. The trawl CV sector can have significant incidental catch of Pacific cod in other fisheries like pollock and yellowfin sole, and historical amounts of incidental catch have been variable. The Council recommended that the PCTC Program not include incidental catch in the calculations for QS.

Comment 9: Will NMFS issue a PCTC Program QS permit to the owner of a processing facility that is no longer operational, based on the qualifying processing history at that facility?

Response: No. NMFS will not issue a PCTC Program QS permit to the owner of an inactive processing facility (*i.e.*, the facility is not authorized by an FPP or FFP upon the effective date of this final rule) based on the qualifying processing history at that facility. Upon approval of an Application for PCTC Program QS, NMFS will issue a PCTC Program QS permit to the owner of a processing facility with an active FPP or qualifying FFP. For a person (*i.e.* processing firm) to receive a PCTC Program QS permit, it requires two things: 1) processing history in the fishery during the qualifying years and 2) a currently valid FPP or FFP (in the case of an eligible CP with a Pacific cod mothership endorsement).

Comment 10: Does the firm that operated the Adak facility in 2013 get credit for the Adak facility's processing history if the firm does not hold an FPP for that facility now, but does operate one or more facilities in the BS each with its own FPP?

Response: No. Processing history is facility specific. A firm will not receive a PCTC Program QS permit for a facility that does not have a current FPP. The processing history associated with that facility will be deducted from the total amount of eligible processing history during the qualifying years when calculating the distribution of QS to processors.

A person may own more than one processing facility with qualifying processing history and an FPP or FFP and therefore may receive more than one PCTC Program QS permit. A firm that operated a processing facility that is no longer active would be eligible to receive a PCTC QS permit for a different facility if it holds a valid FPP for that facility and that facility has qualifying processing history.

Comment 11: How would a new processor become eligible to receive a PCTC Program QS permit in order to annually associate with a cooperative?

Response: A processor would need to have an active FPP and purchase QS from an existing PCTC Program QS permit holder under the QS transfer provisions in this final rule.

Note that any processor with an FPP can process CQ. There is not a requirement to hold a PCTC Program QS permit or associate with a cooperative for a processor to receive deliveries and process CQ. Further, any shoreside processor, stationary floating processor, or mothership, including an eligible CP with a BSAI Pacific cod trawl mothership endorsement, may associate with a cooperative regardless of whether or not the processor holds a PCTC Program QS permit. For PCTC Program QS permit holders, the only way to receive benefits from a PCTC Program QS permit is to associate annually with a cooperative.

Comment 12: Include the years 2004 through 2009 in the PCTC Program official record to determine an initial QS allocation to an Aleutian Islands shoreplant, similar to the catch history for determining initial allocations to CV LLP licenses with a transferable AI endorsement.

Response: Even if the PCTC Program included 2004 through 2009 in the qualifying years, the Aleutian Islands shoreplant is ineligible for an initial QS allocation because it does not have an active FPP.

The QS issued to processors is divided among eligible processors based on the percentage of legal landings of Pacific cod they processed during the A and B seasons during the qualifying years compared to the total legal landings of BSAI Pacific cod processed by all eligible processors. Because processing facilities will be issued QS based on deliveries of this catch history, the Council chose to award QS based on processing history by considering the time frame of 2009-2019, the same time frame used for the majority of CVs. The Council did not recommend a variation in the qualifying years for any processor either in the BS or AI.

The Council and NMFS considered several different options for the range of qualifying years including an option that would have included catch history years from 2004 through 2019. The Council selected 2009 through 2019 as representative of history for the vast majority of CVs because these years reflect current and historical participation and are consistent with the Council's approach to awarding QS based on catch history in other rationalization programs. The Council decided against history earlier than 2009 for the majority of catch history because that was prior to the implementation of Amendment 85 to the BSAI FMP. Amendment 85 established sector allocations for Pacific and separate TAC splits for the Pacific cod stock, which changed fishery management and operations.

The one exception to the qualifying years is for LLP licenses with a transferable AI endorsement that, prior to receiving that AI endorsement through Amendment 92 to the BSAI FMP, participated in the AI parallel fishery from January 20, 2004 through September 13, 2009 without an LLP license. Eight vessels met the criteria for eligibility to receive these transferable AI endorsements based on their fishing activity in parallel fisheries where they did not qualify for an LLP license but still fished in federal waters.

Comment 13: The degree to which an LLP license holder will benefit from dropping a year of catch history from the calculation for initial QS allocations will depend upon the consistency of their annual participation in the fishery. An LLP holder with one or more years of low or no legal landings will benefit from dropping that year more than an LLP license holder with consistently high annual participation.

Response: The Council and NMFS considered a range of drop years from zero to two years. The range of qualifying years is 11 years, and unforeseen events have occurred for many fishery participants. The Council recommended and NMFS is implementing a provision to drop one year of catch history from the initial allocation as a fair way to remove one year that may not be representative of typical participation in the fishery.

Comment 14: Clarify that QS can only be used if the QS holder annually joins or associates with a cooperative.

Response: QS holders must annually join or associate with a cooperative in order for their QS to generate the CQ necessary to harvest Pacific cod in the BSAI trawl sector.

Comment 15: To acquire QS that would attract vessels to deliver to a processor that does not receive an initial allocation of QS (such as an Aleutian Islands shoreplant), a processor would need to purchase an LLP license with attached QS. This creates a barrier to entry into the PCTC Program because LLP licenses have a very high market price and QS is only a small portion of that value. Because QS is only a small part of an LLP



license's value, this makes it functionally impossible for an Adak processor to purchase QS that it would need to use in lieu of an initial allocation of QS to attract vessels.

Response: A new entrant may acquire either harvester QS by purchasing an LLP license with associated QS or by purchasing a processor-held PCTC Program QS permit. It is not yet clear what the market may be for processor PCTC Program QS permits. Generally, QS is non-severable from the LLP license or PCTC Program QS permit except in situations where an ownership cap would be exceeded upon transfer. Regulations specifying transfer provisions and limitations for QS are specified in regulations at § 679.130(j) and ownership caps are at § 679.133.

This PCTC Program does not create a closed class of processors who may process CQ. Any shoreside processor, stationary floating processor, mothership, and eligible CPs with a BSAI Pacific cod trawl mothership endorsement, may receive and process CQ. A processor is not required to associate with a cooperative to receive deliveries and process CQ.

#### *Aleutian Islands CQ set-aside*

Comment 16: Establish a minimum annual AI CQ set-aside amount equal to 5,000 metric tons. This is the amount of Pacific cod determined to be the minimum amount necessary to support a processing plant in the AI under Amendment 113 to the BSAI FMP. Amendment 113 was implemented in 2016 to provide a 5,000 metric tons set-aside delivery requirement of Pacific cod for shoreplants in the communities of Adak and Atka, considered to be the minimum necessary to support the regional economy. Without a floor of 5,000 metric tons of Pacific cod, the volume of fish may not meet the minimum viable amount for the processing plant to operate in Adak.

Response: Shortly after the court's vacatur of Amendment 113, the Council initiated action to rationalize the BSAI trawl CV Pacific cod fishery and included options to meet the objective of supporting sustained participation by AI communities in the

Pacific cod trawl CV fishery. The Council recommended and this final rule implements community protections for Adak and Atka in the form of a set-aside provision. Under the PCTC Program, cooperatives are required to collectively set-aside 12 percent of the A season CQ for delivery to an Aleutian Islands shoreplant during years in which a community representative notifies NMFS of their intent to process Pacific cod. The AI CQ set-aside provides opportunity for Pacific cod landings to support an Aleutian Islands shoreplant that, in conjunction with other fishery landings and allocations, such as the AI pollock fishery, benefit the communities of Adak and Atka. This final rule strikes a balance between supporting fishery-dependent communities and ensuring that the fishery sectors have a meaningful opportunity to fully harvest their allocations by including several measures to prevent AI Pacific cod from going unharvested.

This provision is different from the set-aside implemented under Amendment 113 but is intended achieve a similar goal. The Council considered maintaining the 5,000 metric tons floor similar to Amendment 113, but ultimately decided against it to maintain the same allocation criteria for all processors and to address concerns about leasing the 5,000 metric tons floor in years when there was not an active Aleutian Islands shoreplant. In addition, all the allocations under the PCTC Program are based on percentages of the TAC, not static numbers. This allows for flexibility in years of low TAC.

Comment 17: Clarify regulations at § 679.132(c)(4) governing the AI CQ set-aside provision to direct the Regional Administrator to remove the delivery requirement rather than allow the Regional Administrator to remove the delivery requirement if the Regional Administrator determines that Aleutian Islands shoreplants will not process the entire AI CQ set-aside.

Response: NMFS agrees that the proposed regulatory language needed to be clarified. NMFS removed language at § 679.132(c)(4) regarding reallocating the projected unused AI set-aside to PCTC Program cooperatives in proportion to the amount

of CQ that each PCTC Program cooperative received in the initial allocation of CQ for the remainder of the A and B seasons. This language is not applicable to the PCTC Program because the cooperatives manage the AI CQ set-aside.

However, NMFS maintained in the regulations that the Regional Administrator may remove the delivery requirement for some or all of the projected unused AI CQ set-aside if the Regional Administrator determines that Aleutian Islands shoreplants will not process the entire AI CQ set-aside. NMFS will monitor the cooperative's implementation of the AI CQ set-aside throughout the A and B seasons. NMFS will consider the number and frequency of deliveries to Aleutian Islands shoreplants as well as the season timing and remaining CQ to be harvested. The Regional Administrator will use this information to determine if it is appropriate to remove the delivery requirement for some or all of the projected unused AI CQ set-aside.

Comment 18: Modify regulations at § 679.132(c)(4) to clarify that if both communities of Adak and Atka file a notice of intent to process, the delivery requirement would be in effect until both communities withdraw their notice of intent.

Response: NMFS agrees and has modified regulations at § 679.132(c)(5) and (6). In the event all notices of intent to process are withdrawn, the Regional Administrator will remove the AI CQ set-aside delivery requirement for that calendar year by publishing a notice in the **Federal Register**.

Comment 19: Reject the AI CQ set-aside as inconsistent with National Standard 4. All cooperative members get the benefit of both A and B season CQ allocations. However, an Aleutian Islands shoreplant only gets a "reservation" for 12 percent of the A season CQ. This takes care of the issue of giving a disproportionate share of processor-held CQ to company boats, but it still allows processors to attract new vessels with volume rather than price using CQ off a company boat to attract independent boats with a double share of CQ, which an Adak processor cannot do because it does not get any CQ.

This means an Adak processor cannot offer a single share match, let alone a double share, leaving the Adak plant operator at an insurmountable competitive disadvantage.

Response: NMFS disagrees that the allocations of QS under the PCTC Program are inconsistent with National Standard 4. National Standard 4 states that “Conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (a) fair and equitable to all such fishermen; (b) reasonably calculated to promote conservation; and (c) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privilege.”

In considering whether an allocation is fair and equitable under National Standard 4, NMFS assesses whether the allocation is rationally connected to achieving OY in the fishery, would maximize overall net benefits, and achieve the objectives of the FMP. In addition, NMFS considers the relative impacts of various allocations in light of status quo conditions. Here, the PCTC Program allocates QS to processors based on two objective criteria: 1) historic participation in the fishery and 2) an active processing license that demonstrates ongoing participation. This second criteria provides some reasonable assurance any allocated privileges will be utilized and OY will continue to be achieved in the fishery. There is currently no active processor (with an active FPP) in Adak that could be allocated QS based on historic participation, and operations at the Adak plant have been inconsistent. As a result, under the processor-held QS eligibility criteria alone, AI communities would not receive QS under this program.

However, the Council and NMFS recognize that providing some degree of support to AI communities remains a management objective. Therefore, this rule includes a set-aside for AI communities that would require cooperatives to deliver an amount of annual CQ equal to the lesser of either 12 percent of their A season CQ or the AI DFA, to

an Adak or Atka if, in the future, there is an active shoreplant in the AI capable of receiving deliveries of Pacific cod. The AI CQ set-aside provision is rationally connected to a management objective of supporting AI fishing communities, while recognizing that there is currently no active processing facility in Adak to which NMFS could allocate privileges.

NMFS disagrees that the PCTC Program allocations are not fair and equitable because they do not place AI communities on the same footing as active processors. The fact that the AI CQ set-aside is based on total A season CQ is immaterial to fairness and equity— that simply provides a basis for calculating the amount of the set-aside in any given year. The set-aside remains in effect through the B season, and it is intended to mandate deliveries of an amount of Pacific cod to Aleutian Islands shoreplants through the B season whenever Aleutian Islands shoreplants are operating.

Comment 20: Given the historic uncertainty that AI communities have faced when trying to access fish, it is good that the Council ensured protections for Aleutian Islands shoreplants within the PCTC Program. However, there should be more clarity over whether processors in the western Aleutian Islands, including Adak, would be required to join a cooperative after signaling the Adak's intention to process fish in a given year. It appears that Adak would not be required to join a cooperative to receive the AI CQ set-aside, but rather that cooperatives are responsible for delivering the set-aside to AI processors. Adak should not be required to join a cooperative to receive fish for processing.

Response: An Aleutian Islands shoreplant is not required to associate with a cooperative to receive deliveries of CQ. An Aleutian Islands shoreplant may choose to associate with a cooperative, but that is not required to receive the benefits of processing Pacific cod under the AI CQ set-aside provision of the PCTC Program. An Aleutian

Islands shoreplant with an active FPP may purchase QS in the future and associate with a cooperative by bringing the QS into the cooperative.

Comment 21: Correctly describe all references to the amount of the AI CQ set-aside as 12 percent of the PCTC Program A season CQ rather than 12.5 percent.

Response: In the preamble to the proposed rule describing the PRA requirements needed for this Program, NMFS erroneously described the AI CQ set-aside as 12.5 percent instead of 12 percent and has corrected the issue in the final rule. All other references to the AI CQ set-aside in the proposed and final rule correctly described it as 12 percent of A season CQ or the AI DFA, whichever is less.

Comment 22: For the community of Adak, the 5 year PCTC Program review is more likely to be an autopsy report unless there are significant changes to the AI CQ set-aside component prior to publication of a final rule. Access to Pacific cod is crucial for the economic success of the Aleutian Islands shoreplant. Access to Pacific cod means the Aleutian Islands shoreplant can support AI harvesters of multiple species. Without Aleutian Islands shoreplant access to Pacific cod, these harvesters are essentially stranded. There is no other community or processing facility in Alaska that is more dependent on Pacific cod than Adak. Pacific cod has accounted for the overwhelming majority of landings in Adak since the plant opened in 1999. Adak is unique in this regard; the pollock fishery (not Pacific cod) is the primary fishery for Bering Sea processors.

Response: The Aleutian Islands shoreplants have a unique processing history for many reasons, and their remote coastal location is a challenge both for plant operations and harvester deliveries. NMFS understands that Pacific cod has been crucial to the economic success of Aleutian Islands shoreplants, but Aleutian Islands shoreplants have not always been open to accept deliveries, as shown in the past few years. Without an active AI processor, there is no entity to which NMFS could allocate QS on the same

terms as other processors. The PCTC Program instead implements an AI CQ set-aside element that provides an opportunity for AI communities to benefit from the PCTC Program in years when an active processor is able to accept deliveries.

Comment 23: The recommendation by the Council to adopt an AI CQ set-aside instead of a QS allocation fails to meet National Standard 8 and does not adequately respond to the problem statement relative to the dependence of the community of Adak on the AI Pacific cod fishery.

Response: NMFS disagrees that the AI CQ set-aside is inconsistent with National Standard 8. National Standard 8 states “Conservation and management measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities by utilizing economic and social data that meet the requirement of paragraph (2) [i.e., National Standard 2], in order to (a) provide for the sustained participation of such communities, and (b) to the extent practicable, minimize adverse economic impacts on such communities.”

The AI CQ set-aside is intended to provide for the sustained participation of AI communities in the event there is an operational Aleutian Islands shoreplant in future years. Currently, no operating shoreplant is open to accept deliveries of Pacific cod. Even if the plant were open, without the PCTC Program AI CQ set-aside vessels, would have no obligation to deliver Pacific cod to AI communities. Compared to current conditions, the PCTC Program will provide for the sustained participation of AI communities and minimize adverse economic impacts on AI communities to the extent practicable by ensuring these communities will receive deliveries of Pacific cod in years when an Aleutian Islands shoreplant is in operation and able to take deliveries.

The Council and NMFS took into account the importance of fishery resources to fishing communities, including but not limited to Adak. The PCTC Program is designed

to provide for the sustained participation of many different fishing communities (*i.e.*, those communities substantially engaged in and/or dependent on the fishery), and features a history-based approach for initial allocation of QS that would be made in proportion to historical levels of participation in the fishery during the qualifying period.

Comment 24: The recommendation by the Council to adopt an AI CQ set-aside instead of a QS allocation fails to meet the Magnuson-Stevens Act 303A LAPP standards.

Response: NMFS disagrees that the PCTC Program fails to meet the Magnuson-Stevens Act 303A LAPP standards. The PCTC Program is authorized by section 303A of the MSA. The QS issued under the PCTC Program would qualify as a permit (per MSA 303A(b)(1)) and would give the permittee exclusive access to those fish while the permit is held.

The Magnuson-Stevens Act LAPP provisions in Section 303A(c)(5)(A) require that the Council ensure fair and equitable initial allocations, including consideration of (1) current and historical harvests, (2) employment in the harvesting and processing sectors, (3) investments in and dependence on the fishery, and (4) the current and historical participation of fishing communities. The Council developed and NMFS implemented the PCTC Program after considerable debate and review of the Analysis prepared to support Amendment 122 and this final rule. Any harvesters based in AI communities will receive QS allocations just like other participants. And all processors are subject to the same objective criteria for initial allocations of QS. The AI CQ set-aside was a means of providing some support to AI communities despite there being no active processor with history in the fishery to which NMFS could allocate QS. No communities are being allocated QS under the PCTC program.

Comment 25: Disapprove Option 6.1 (a CQ set-aside to Aleutians Islands shoreplants) and instead adopt the structure of Option 6.2 (an allocation to Aleutian



Islands shoreplants). Adak currently does not have a processor operating the facility. It has not been possible to attract an operator, in large part because of the lack of leverage and barriers to entry inherent in the PCTC Program. The Council's recommendation of Option 6.1 rather than 6.2 creates a fundamental structural flaw.

Response: The Council recommended Amendment 122, including option 6.1, due to the unique characteristics of the AI communities and the difficulties in maintaining an open plant each year. Option 6.1 creates the set-aside of 12 percent of the A season CQ for delivery to AI shoreplants. The AI CQ set-aside is designed to be in place during the trawl CV sector Pacific cod A and B seasons. Cooperatives are responsible for submitting a plan to coordinate the harvest and delivery of the set-aside. The Council did not select Option 6.2 based, in part, on concerns about ability to lease CQ in years that the Aleutian Islands shoreplant was not operational, which was not the intent of the Council in providing processing opportunities for the AI communities. The Aleutian Islands shoreplants are the only processing plants that have a set-aside mechanism.

Similarly to other business relationships between harvesters and processors, a processing plant will need to offer competitive prices to harvesters. This is true for processing plants in all of Alaska's federal fisheries.

Comment 26: An Adak entity needs to be able to associate with a cooperative to have a seat at the table. Vessels have disincentives to work with Adak because those vessels would be walking away from their pro-rata share of the 22.5 percent processor CQ. This is asymmetrical and probably disadvantages Adak. There is no limit on the number of LLP licenses that may join a single cooperative, the number of processors a cooperative could associate with, nor on the amount of QS a single cooperative could control.

Response: An Aleutian Islands shoreplant is not required to associate with a cooperative, but it may associate with a cooperative whether or not it holds a PCTC

Program QS permit. In addition, CVs harvesting CQ may deliver to any shoreside processor, including an Aleutian Islands shoreplant, regardless of whether or not that processor holds a PCTC Program QS permit and regardless of whether or not the processor is associated with a PCTC Program cooperative.

Cooperatives may form annually in association with a federally permitted processor to harvest their CQ. That processor must hold an active FPP or FFP, but they are not required to also hold QS. This extends to all active processors, including potential Aleutian Islands shoreplants. However, processors do not form cooperatives and will not be members of cooperatives under the PCTC Program. In addition, associating with a processor in Adak would not require a cooperative to forego access to processor-held QS. Though each cooperative is required to associate with at least one processor, there is no limit on the number of processors with which a cooperative may associate.

Regarding incentives to deliver to an Aleutian Islands shoreplant, cooperatives are required to annually submit an inter-cooperative agreement that describes, 1) how the AI CQ set-aside would be administered by the cooperatives; 2) how the cooperatives intend to harvest the AI CQ set-aside; and 3) how cooperatives would ensure that CVs less than 60 ft (18.3 m) LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI CQ set-aside for delivery to an Aleutian Islands shoreplant. In years the AI CQ set-aside is in effect, refusing to work with an Aleutian Islands shoreplant could mean the cooperatives forfeit 12 percent of their A season CQ. Therefore, NMFS expects the cooperatives will have an incentive to work with an Aleutian Islands shoreplant.

Comment 27: Each cooperative is required to set aside 12 percent of its CQ (independent of where the members' catch history was earned or whether they have AI LLP endorsements). This is unnecessarily burdensome for all parties; an Adak processor

will have to deal with each cooperative individually under some very constrained deadlines.

Response: The cooperatives are required to collectively set aside 12 percent of the A season CQ and come up with a delivery strategy through an inter-cooperative agreement. The cooperatives will have an incentive to come up with a plan that works for all parties to ensure CQ would not go unharvested when the set-aside is in effect. Aleutian Islands shoreplants will need to work with cooperatives but the cooperative system allows the flexibility to work with one cooperative or with all cooperatives. It is possible the inter-cooperative agreement could designate one cooperative (or more) to coordinate deliveries with Adak so long as 12 percent of the total A season CQ is delivered to the Aleutian Islands shoreplants.

Comment 28: The definition of an Aleutian Islands shoreplant needs to recognize that the Aleut Corporation's lease to an operator includes buildings and land connecting to the dock as well as the dock itself. The final rule should affirm that a stationary floating processor that is moored to a dock that is physically integrated into processing operations on land qualifies as being "land based" west of 170 degrees.

Response: The Council selected a specific definition for an Aleutian Islands shoreplant, similar to Amendment 113, based on public testimony and the analysis to prevent stationary floating processors from relocating to Adak and competing with the shoreplant. The definition of an Aleutian Islands shoreplant does not include a stationary floating processor at this time.

Comment 29: Use caps apply at the firm level, as they should. However, the analysis shows that the fishery will be dominated by a couple major companies who will be grandfathered over the cap. Meanwhile Aleutian Islands shoreplants will be effectively capped at 12 percent by the structure of the cooperative AI CQ set-aside. Because the AI CQ set-aside is not an allocation, the structure of the program means the 12 percent is

also very likely to be a ceiling with Aleutian Islands shoreplants effectively capped at 12 percent, which is far less than their historical average.

Response: NMFS disagrees that the 12 percent AI CQ set-aside is a ceiling. The Council designed the community protection measures to benefit Adak and Atka if their plant is operational and accepting deliveries for that year. The 12 percent AI CQ set-aside is a minimum delivery requirement in years when an Aleutian Islands shoreplant is operational. Defining the set-aside as a percentage of CQ rather than a fixed amount avoids disproportionate impacts on other PCTC Program participants in years of low TAC (as opposed to the static 5,000 metric tons delivery requirement under Amendment 113).

The Magnuson-Stevens Act requires use caps in development of a LAPP to prevent any person from holding, acquiring, or using an excessive share of limited access privileges. One of the use caps in the PCTC Program is a firm level processor cap that no company may process more than 20 percent of the CQ (§ 679.133(a)(4) and (5)). This processing cap does not apply to Aleutian Islands shoreplants when the AI intent to process is in effect.

Comment 30: Without a tag identifying whether a unit of CQ was designated as part of the AI CQ set-aside, it will be difficult for the Regional Administrator to know inseason whether the AI CQ set-aside will be harvested. If any Pacific cod delivered to an AI shoreplant is assumed to accrue against the set-aside until the 12 percent amount has been delivered, that introduces further complexities that serve to make the 12 percent a de-facto cap.

Response: All CQ caught in the PCTC Program will be accounted for at the dock, except deliveries to motherships, and NMFS would consider all CQ landed to an Aleutian Islands shoreplant to count toward the AI CQ set-aside. There is no need to tag each unit of CQ as part of the set-aside or not part of the set-aside, because NMFS will track all

deliveries of Pacific cod, and cooperatives will not be able to deliver more than 88 percent of A season CQ to anywhere other than an Aleutian Islands shoreplant.

Once 12 percent of A season CQ has been landed at an Aleutian Islands shoreplant, cooperatives could continue to deliver to AI communities but would no longer be required to. In contrast, once 88 percent of A season CQ had been delivered elsewhere, vessels could deliver CQ only to an Aleutian Islands shoreplant. If the cooperatives fail to deliver 12 percent of A season CQ to an Aleutian Islands shoreplant, the remainder of the set-aside would remain in place for the B season rather than being rolled over as CQ with no restrictions on delivery. The operating Aleutian Islands shoreplant may accept deliveries of CQ harvested in either the BS or the AI. The cooperatives would monitor the conditions and terms of the inter-cooperative agreement to ensure those provisions are followed.

Comment 31: The proposed rule appears to only limit CVs in the BS, implying that the CVs could erode the AI CQ set-aside by fishing in the AI. Section 679.132(a)(4) outlines the DFA limitations and seems to deal with that by indicating CVs delivering to an Aleutian Islands shoreplant are the only vessels allowed to access the DFA. NMFS should take a very careful review of the text to confirm that the language captures the intent of the AI CQ set-aside.

Response: When the AI CQ set-aside is in effect and set equal to the AI non-CDQ DFA, directed fishing for Pacific cod in the AI may be conducted only by PCTC Program CVs that deliver their catch to an Aleutian Islands shoreplant. However, when the AI DFA is greater than the set-aside (*i.e.* greater than 12 percent of A season CQ), the amount of the DFA in excess of the set-aside could be harvested by vessels delivering to any processor. That would not erode the set-aside, which would remain at 12 percent of A season CQ and apply to all CVs. Cooperatives may not deliver more than the A season

CQ minus the AI CQ set-aside established under § 679.132 to processors in the BS subarea when the AI CQ set-aside is in effect.

Comment 32: When the AI CQ set-aside is equal to the AI DFA, directed fishing for Pacific cod in the AI may be conducted only by CVs that deliver their catch of AI Pacific cod to Aleutian Islands shoreplants. This is a crucial element of making the AI CQ set-aside work under either set-aside option.

Response: NMFS acknowledges the comment in support of the AI CQ set-aside structure. In years when the AI CQ set-aside is equal to the AI DFA, all CQ harvested in the AI must be delivered to an Aleutian Islands shoreplant unless the Regional Administrator removes the AI CQ set-aside because there is no operational processor.

Comment 33: How can NMFS guarantee that the cooperatives will comply with the AI CQ set-aside and what are the consequences if the cooperatives fail to comply? Who negotiates and must submit to the inter-cooperative agreement?

Response: The Council recommended, and this final rule implements, a requirement for all PCTC Program cooperatives to form an inter-cooperative agreement that includes an AI CQ set-aside delivery agreement. It is the intention of the Council and NMFS that cooperatives will negotiate with one another to ensure delivery occurs consistent with the AI CQ set-aside provision.

Failure to come to any agreement would result in NMFS withholding CQ. NMFS will not issue CQ to cooperatives until the inter-cooperative agreement is submitted to NMFS with the cooperative application.

If cooperatives fail to implement the agreement and do not deliver the AI CQ set-aside, the cooperatives would lose access to that portion of the CQ in that year, as it could only be harvested and delivered to an AI shoreplant.

*Antitrust concerns with the AI CQ set-aside*

Comment 34: The AI CQ set-aside may have antitrust implications between the processing plant operators and the cooperatives because it would force the Aleutian Islands shoreplant to expose its fish prices and marketing plans to its competitors prior to the season. Amendment 122 creates an opportunity for competitively sensitive information to flow back to competing processors, and it may also align the cooperatives' incentives with those of competing processors (and lead to other strategic behavior that undermines competition). The opportunity for collusion is so significant that this may rise to the level of a "per se" violation of the Sherman Act.

Response: NMFS disagrees that the PCTC Program would result in per se antitrust violations. These same concerns were raised prior to the publication of the proposed action to the Department of Justice (DOJ) Antitrust Division, which has expertise in the administration of federal antitrust laws. DOJ did not inform NMFS that the Program would result in any per se antitrust violations. All catch share programs create some potential for anticompetitive behavior, but participants are required to comply with antitrust laws in order to retain their fishing privileges. Pursuant to Magnuson-Stevens Act section 303A(c)(1)(K), NMFS would revoke the limited access privileges of any participant found to have violated federal antitrust laws.

Comment 35: Explain how the Council and NMFS intend to manage the cooperatives to avoid potential antitrust law violations. The difference between direct allocation and AI CQ set-aside is competitively significant if Adak is required to join a cooperative to receive fish for processing. An inter-cooperative agreement controls the terms for how a set-aside for Aleutian Islands shoreplants will be administered, clearly putting the Aleut Corporation at a competitive disadvantage and raising antitrust concerns. Further, the proposed plan does not provide any active governmental supervision of the market-allocation arrangement to ensure fair treatment of the Aleut Corporation. The Aleut Corporation plant would be a loser in this unlawful market

allocation agreement and would be forced to accept products delivered under an inter-cooperative agreement.

Response: The cooperatives are responsible for management of the cooperative system. All cooperatives are intended to only conduct and coordinate harvest activities of members and are not Fishermen's Collective Marketing Act (FCMA) cooperatives. An Aleutian Islands shoreplant would not be required to join a cooperative to receive CQ for processing. And, because cooperatives would be required to deliver a fixed percentage of CQ to an Aleutian Islands shoreplant when operational, it is possible that shoreplant may have some leverage in negotiating deliveries. NMFS does not regulate market prices. However, as stated above, the Magnuson-Stevens Act allows for NMFS to revoke and redistribute any LAPP held by any person found to have violated the antitrust laws of the United States.

#### *Impacts to Adak*

Comment 36: Reject the FONSI prepared for the EA analyzing the impacts of Amendment 122 and conduct an Environmental Impact Statement (EIS). There are real impacts to the human environment of Adak from the lack of processing in the community. The most recent major positive impact to the economy was the implementation of Amendment 113. The loss of Amendment 113 and the closure of the Adak plant have already led to the collapse of the local economy and the likely closure of the Adak school in 2024. This loss of the processing facility and its prolonged closure will have sociological impacts on the community. Each year that fish processing does not occur, the community loses residents, including families with school-age children.

Amendment 122 will not likely restore plant operations, revive the local economy, or reopen the school. NMFS must adequately analyze a solution to provide relief and the environment to allow fish processing to occur in Adak to ensure



consequences of existing conditions are identified and mitigated. Amendment 122 will have negative impacts and likely lead to prolonged closure of the processing facility.

The FONSI is incorrect when it states that Amendment 122 would not have any effect on the health of minority or low-income communities. Adak is a small, remote, island community with significant Unangax̂ population and heritage. According to the Internal Revenue Service, Adak is a Qualified Opportunity Zone, which is defined as “an economically distressed community.” It would be difficult to argue that Adak is not a “minority or low-income community.”

These effects should be well-documented in an EIS as these impacts need to be studied in detail in order for NMFS and the Council to know the full and true impacts Amendment 122 will have on Adak.

Response: The PCTC Program includes provisions designed to facilitate processing activity that could benefit the economy in Adak and Atka. With respect to providing for the sustained participation of fishing communities (*i.e.*, those communities substantially engaged in and/or dependent on the fishery), the PCTC Program features a history-based approach for initial allocation of QS in proportion to historical levels of participation in the fishery to address fairness and equity.

NMFS acknowledges that there are circumstances unique to Adak and that the processing facility, which is important to the local economy, was relying on Amendment 113. However, after a court struck down Amendment 113 and the plant closed, the Council had to consider means of providing some benefits in the future if a plant were to open again while recognizing there is no operating business that could currently hold QS.

NMFS prepared an Analysis in compliance with the National Environmental Policy Act (NEPA) to determine whether the environmental impact of the proposed action was significant. The Analysis also analyzed social and economic impacts of the alternatives, including access to fishing activity, compared to status quo conditions.

Section 2.10.5 of the Analysis discussed the impact of the proposed action on fishing communities. Based on the Analysis, NMFS concluded that Amendment 122 and this final rule will not have a significant impact on the human environment. NMFS has determined that Amendment 122 will not have significant adverse impacts on the City of Adak.

NMFS anticipates there will be beneficial economic effects compared to status quo because the AI CQ set-aside provision is designed to provide Pacific cod deliveries to Adak and Atka in years when there is an operational processor. Because the EA demonstrates there will be no significant impacts on the human environment compared to current conditions—as opposed to in comparison to a different program not currently under consideration—NMFS is not required to prepare an EIS under the requirements of NEPA. Additionally, the Council on Environmental Quality regulations implementing NEPA state in 40 CFR 1502.16(b) that economic or social effects by themselves do not require preparation of an EIS.

Comment 37: The success or failure of the Aleut Corporation owned processing plant has direct and real impacts to all 4,000 of the shareholders; the economic impact of decisions made for Adak reach far wider than the community alone. Harm to the economic stability for the population of Adak would result in significant health impacts.

Response: NMFS anticipates beneficial effects on the health and the environment of minority or low-income communities like Adak may be expected as a result of this action, compared to status quo. For Adak specifically, the AI CQ set-aside provision is designed to provide Pacific cod deliveries to Adak and Atka in years when there is an operational processor.. As a result, this action includes provisions designed to facilitate processing activity that might not otherwise occur and could benefit the economy in Adak and Atka. Sections 2.10.5 and 2.10.8 of the Analysis prepared for this action provide additional detail (See ADDRESSES).

*PCTC Program Cooperatives*

Comment 38: Clarify that a cooperative can associate with any permitted processor regardless of whether that processor holds QS, subject to some limitations on CPs acting as motherships.

Response: NMFS agrees with this clarification. There is nothing that precludes cooperatives from associating with a permitted processor that does not hold QS. Additionally, cooperatives may deliver Pacific cod harvested with CQ to any federally-permitted processor, whether or not it is associated with the cooperative.

Comment 39: Only target catch should count against CQ. Taking the ICA off the top gives extra fish to boats that have Pacific cod bycatch in other fisheries.

Response: NMFS concurs that only target catch counts against CQ. Pacific cod caught incidentally in other target fisheries contribute to the Pacific cod ICA. The Regional Administrator will annually determine the amount of the A and B season ICA needed in other trawl CV target fisheries and deduct that amount from the trawl CV TAC. The ICA is determined based on the ICA rates in previous years and the projected amount necessary for the current year. After deducting the ICA, the remaining TAC is the DFA, which will be fully allocated as Pacific cod CQ for the A and B season under the PCTC Program.

Comment 40: For clarity, modify the last sentence of § 679.131(j)(3)(i) to mirror the preamble and Council motion to clarify that all processors with an eligible FPP or FFP are eligible to process CQ under this program (regardless of whether or not they are issued processor-held QS), subject to eligibility requirements under Amendment 120 to limit CPs acting as motherships and subject to the at-sea processing limits placed on such CPs under § 679.133(b)(2) of this rule.

Response: NMFS agrees and has modified language at § 679.131(j)(3)(i) to include this clarifying change. The specific modification in the table adds that “all

processors” would include processors with an FFP subject to eligibility requirements under Amendment 120 to limit CPs acting as motherships as described at § 679.133(b)(2).

Comment 41: Clarify whether 1) a vessel can be listed as eligible to harvest in a cooperative other than the cooperative to which it assigned its QS and 2) a vessel can deliver its CQ to a processor if it is a member of another processor's cooperative?

Response: NMFS agrees that a vessel (as identified by its FFP) can be listed on multiple cooperative applications as an eligible harvester despite the vessel owner not holding QS as a member of each cooperative. Each LLP license and associated QS may only be listed on one cooperative application and the LLP license holder is therefore a “member” of that cooperative.

Vessels may deliver CQ to a different processor than the processor associated with their cooperative. There is not a closed class of processors eligible to receive deliveries of CQ, meaning a vessel may deliver some or all of the CQ to multiple processors.

Comment 42: Cooperative reports must be mandatory to provide accountability, as cooperatives must 'ensure/guarantee' the PCTC Program achieves its objective of supporting sustained participation by fishery dependent communities as stated in the problem statement.

Response: There is precedent in other programs, such as the Rockfish Program, for relying on voluntary cooperative reporting to the Council, and several reasons to maintain that practice here. The annual cooperative reports to the Council contain the information that the Council requested to determine whether the PCTC Program is meeting its goals and objectives. Voluntary reports reduce the reporting burden on cooperatives and their members without sacrificing providing critical data to the Council.

NMFS separately collects the information that it needs to manage the fishery. Voluntary cooperative reports to the Council also reduce the time NMFS spends collecting and storing the annual reports and eliminates the need to modify regulations for a mandatory report that are burdensome and do not provide information necessary to manage the fishery.

Comment 43: In terms of use of the CQ held in the cooperative, the preamble of the proposed rule is correct and explicit that a cooperative cannot assign a greater proportion of the CQ resulting from processor-held QS to an LLP license owned by that processor for harvest by a vessel owned by that processor than the LLP license would have brought into the cooperative absent any processor-held QS. Part II.F of the preamble to the proposed rule also states the Council intended processor-held QS to be divided among cooperative CVs proportionately to the QS attached to LLP licenses on board the harvesting vessel, but the only restriction in the Council's preferred alternative is relative to processor-held QS used on vessels that are owned by the processor. In all other cases, it is up to the cooperative, in partnership with its associated processor, to determine how best to optimize harvest within the cooperative to meet the objectives of the program.

Response: This final rule establishes use caps to limit the amount of CQ a vessel can harvest at § 679.133. To address vertically integrated companies where a processing company may also own LLP licenses or CVs, the Council intended processor held QS to be divided among cooperative CVs proportionately to the QS attached to LLP licenses onboard the harvesting vessel. In other words, a cooperative should not allow a CV or LLP license owned by that processor to harvest a greater proportion of the CQ resulting from processor-held QS than the LLP license would have brought into the cooperative absent any processor-held QS. The Council specified that the cooperative will monitor this provision and include reporting on harvest of CQ resulting from processor-held QS in the PCTC Program cooperative annual report.

The Council also directed that each cooperative's annual report provide information on CQ leasing activities and any penalties issued and harvest of CQ resulting from processor-held QS. Additionally, NMFS requires cooperatives to include information about the cooperative's plan to monitor CQ leasing activities and the use of CQ derived from processor held QS within the cooperative, in the Application for PCTC Program CQ.

Comment 44: Clarify the terms "affiliated with" and "ownership of a vessel" with respect to the use of CQ derived from processor-held QS.

Response: NMFS defines affiliation and control at § 679.2 Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program. See the response to Comment 43 for more discussion about processor-held QS used in a cooperative with a processor owned vessel.

#### *Prohibited Species Catch Limits*

Comment 45: There is no requirement that the cooperatives will set aside a proportionate amount of PSCs for the CVs that agree to take on the obligation of harvesting the AI CQ set-aside for delivery to an Aleutian Islands shoreplant. NMFS should make it explicit that initial distribution of PSC limits include pro-rata amounts to the AI CQ set-aside and require that the inter-cooperative agreement and each cooperative agreement contain provisions mandating initial distribution of PSC pro-rata to the individual's QS percentage.

Response: NMFS requires an inter-cooperative agreement signed by all cooperatives prior to issuing CQ each year. The cooperatives must agree in the inter-cooperative agreement which cooperatives will deliver the AI CQ set-aside to the Aleutian Islands shoreplants. In that agreement, cooperatives should confirm that there would be sufficient CQ and PSC set aside to accomplish deliveries. The Council recommended a cooperative system to manage the CQ and PSC limits allocated within

the PCTC Program. NMFS anticipates that each cooperative will maximize its usage of CQ and PSC limits to the extent practicable, including adhering to delivery requirements to Aleutian Islands shoreplants in years the AI CQ set-aside is in effect.

Comment 46: Be explicit that the total halibut PSC limit reduction is 25 percent, but in the first year, NMFS will apply a 12.5 percent reduction. This is consistent with the Council motion.

Response: NMFS clarified this change in the final rule preamble and confirms that this provision aligns with the Council's description of the PSC limit reduction described in the analysis. To clarify, the total halibut PSC reduction is 25 percent, phased in over two years. NMFS will reduce the halibut PSC for the PCTC Program by 12.5 percent in the first year of the Program, and will apply a 25 percent reduction to halibut PSC in the second year and each year thereafter.

Comment 47: An Aleutian Islands shoreplant needs to be able to associate with a cooperative in order to be able to access transfers of PSC limits.

Response: NMFS disagrees. Cooperatives can process their Pacific cod at any processor, subject to the at-sea processing sideboard limit specified at § 679.133(b)(2). Processors do not need access to PSC limits; only harvesters do.

#### *Inter-cooperative agreement*

Comment 48: NMFS should make the PCTC Program official record or a list of LLP license holder information available to the inter-cooperative manager when application packages are sent out.

Response: NMFS will publish a list of LLP license holders and processors who are expected to qualify for QS under the PCTC Program on the Alaska Region website with the publication of this final rule in the **Federal Register**.

Comment 49: The proposed rule states that all participants in the Program would be required to organize a cooperative prior to the November 1 deadline each year. Does

the inter-cooperative agreement need to be in place by November 1st? Where are the application requirements for the inter-cooperative agreement? In the proposed rule, it appears that the individual cooperative applications would simply include a copy of the inter-cooperative agreement that defines how the AI CQ set-aside will be harvested.

Response: Inter-cooperative formation needs to occur prior to November 1. There are no application requirements for the inter-cooperative agreement; however, cooperatives must include a copy of the inter-cooperative agreement in order for their CQ application to be approved, and that agreement must specify how the AI CQ set-aside would be harvested.

For the first year, NMFS is making a change to the deadline to accommodate timing concerns. For the calendar year 2023 only, each cooperative must submit the inter-cooperative agreement to NMFS prior to December 31, 2023, described at § 679.131 (a)(4)(viii). Inter-cooperative formation would be allowed and an inter-cooperative agreement would be required to implement the AI set-aside and to allow for efficient transfers of CQ or PSC limits between cooperatives.

Comment 50: The proposed rule does not provide any guidance on how an inter-cooperative agreement would be agreed upon by the cooperative members.

Response: The Council recommended a cooperative-based structure for implementation of the PCTC Program based on public testimony. NMFS interprets this to mean that the cooperatives will structure their inter-cooperative agreement in a way that satisfies the AI CQ set-aside requirements without further guidance from NMFS on cooperative management. There is precedent set for cooperative systems using agreements like this, including in other North Pacific catch share programs. Because an inter-cooperative agreement will be required in order for NMFS to approve applications for CQ, NMFS does not anticipate additional procedural guardrails are necessary to encourage cooperatives to negotiate this required agreement.



### *Use caps*

Comment 51: It is problematic to provide information down to the individual ownership level for certain types of ownership structures, such as publicly-held companies. In order to effectively enforce ownership and use caps, the preamble to the proposed rule would require a list of all persons, to the individual level, holding an ownership interest in the LLP licenses that join the cooperative. The classic case is a publicly traded owner. Because individual ownership is constantly changing and there is little public disclosure of individual owners, it would be impossible for a publicly traded company to submit an ownership list to the individual level. Similarly, a company such as American Seafoods, with a complex ownership structure and private equity investment, does not have access to ownership information to the individual level.

Revise the proposed standard to require the same information down to the individual level for any person having an ownership interest in excess of five percent. If based on that information NMFS has any concerns about compliance with ownership and use caps, the Agency can be authorized to request additional ownership information.

Response: The Application for PCTC CQ, the Application for Transfer of LLP Groundfish / Crab License, and the Application for Transfer of PCTC QS for Processors include fields to enter the names of all persons, to the individual level, holding an ownership interest in the LLP licenses or QS permit. Federal regulations at § 697.2 defines person as any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other non-individual entity (whether or not organized, or existing under the laws of any state), and any Federal, state, local, or foreign government or any entity of any such aforementioned governments.

This collection of information is necessary to monitor compliance with the use caps on CQ and the ownership caps on QS. NMFS does not currently monitor ownership of publicly traded companies beyond the person (*i.e.*, beyond the company level),

consistent with other Alaska catch share programs. Collections of information remain unmodified from the proposed rule.

*At-Sea Processing Sideboard Limit*

Comment 52: A mothership vessel operator receiving an unsorted codend or “haul” should be allowed to assign the appropriate management program code rather than NMFS determining that the catch would be assigned to the PCTC Program based on the retained catch composition as proposed in regulations at § 679.20. Allowing the vessel operator to designate which hauls are PCTC Program hauls would be consistent with the current practice of evaluating the catch composition prior to determining if a haul is CDQ or non-CDQ (open access).

Response: NMFS agrees. Based on this comment, NMFS changed § 679.5(c)(6)(v)(J) in the final rule. Rather than considering any unsorted codend that is delivered to a mothership to be CQ during the applicable PCTC Program season that is in the Pacific cod target fishery, the final rule implements a method similar to how catch in an unsorted codend is assigned to a CDQ group. The mothership will have 2 hours after completion of weighing all catch in the haul on the mothership to assign a haul to the PCTC Program.

Comment 53: The two CPs acting as motherships to process CQ should be allowed to share processing sideboards within a cooperative or by an inter-cooperative agreement. In Amendment 122, the Council adopted further restrictions on these two vessels, limiting each vessel to processing no more than 125 percent of its average Pacific cod processing history over the years 2009-2019. However, the Council did not address the issue of flexibility between the two motherships with respect to sideboard usage.

It is critical that final rule include this flexibility. It is critical that the second mothership be able to provide markets if the first mothership breaks down. It is critical that the two motherships be able to work together as either of them nears its sideboard

limit to provide at least a single market for those fishermen who have no delivery alternatives.

The solution is to include in the final rule a provision that allows either of the two motherships to exceed its individual sideboard based on a written agreement submitted to NMFS transferring a portion of its annual sideboard to the other mothership. The result would be that the total mothership sideboard would remain in full effect but the individual sideboards could be shared on a voluntary basis between the two motherships in the same manner that CQ can be shared within and among different cooperatives.

Response: The PCTC Program does not limit who may process Pacific cod, but it does place specific limits on the amount of CQ that may be processed by different operation types. This final rule includes the sideboard limit on the amount of CQ that can be delivered by trawl CVs to a CP designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement. This final rule establishes an at-sea processing sideboard limit of 125 percent of the eligible CP's processing history which allows some opportunity for additional offshore processing relative to the historical annual average for each operation. This provision allows two eligible CPs acting as a mothership to process up to 125 percent of their individual average Pacific cod processing history during the qualifying years of 2009 through 2019 with no years dropped.

This provision is not an allocation, and the Council did not recommend a sideboard that would function as a joint processing sideboard limit for the CP sector. Rather, any remaining CQ that exceeds a vessel's at-sea processing sideboard limit may be delivered to any other processor, including a shoreside processor.

Comment 54: Issue the at-sea processing sideboard limit applicable to a CP designated on a groundfish LLP license with a BSAI Pacific cod trawl mothership endorsement as a new permit or as a transferable endorsement that could be transferred

separately from the LLP license (*i.e.*, similar to the provisions that currently apply to certain AI transferable endorsements for smaller vessels).

Response: The Council recommended maintaining the long-standing policy that sideboard limits are not sector allocations and therefore should not be transferable.

Comment 55: Revise the regulations at §679.133(b)(2) to accurately reflect how at-sea processing sideboards are determined. The first option sets the sideboard at 125 percent of the relevant processing history. The second option sets it to 125 percent of the catch history of certain catcher vessels but only up to 125 percent of the processor's relevant processing history. In effect, the outcome under each option will always be that each mothership's sideboard will equal 125 percent of that vessel's relevant processing history. For drafting simplicity, ease of future analysis and implementation, we recommend that the proposed language to determine sideboard amounts be revised to reflect only option 1.

Response: NMFS agrees and has revised regulations at § 679.133(b)(2) to reflect that NMFS will establish a sideboard limit for each LLP license with a BSAI Pacific cod trawl mothership endorsement not to exceed 125 percent of a CP's processing history. Processing Pacific cod by a CP acting as a mothership is limited by eligibility requirements under Amendment 120 and subject to the at-sea processing limits placed on such CPs under § 679.133(b)(2).

### **Changes from Proposed Rule to Final Rule**

This final rule includes the following substantive changes from the proposed to final rule to address public comment, clarify regulatory language, or to correct inadvertent errors in the proposed regulations. Throughout the regulatory text, NMFS also made technical and grammar edits to correct regulatory cross references, use consistent terms, remove redundancy, and promote clarity.

At § 679.2, NMFS modified the definition for *PCTC Program cooperative* to add that a cooperative associates with a processor under the requirements at § 679.131. NMFS also modified the definition for *PCTC Program participants* to include those harvesters and processors who receive, hold, or use PCTC Program QS. This change was necessary to include future Program participants who do not receive initial allocations. NMFS removed the definition for *PCTC Program CQ* because it was duplicative and the content is covered by the definition of *Cooperative Quota (CQ)*.

At § 679.5(c)(6)(v)(J)(I), NMFS clarified the timing requirements for a mothership to designate a haul as PCTC Program management code based on comment 52 and added a requirement to record the observer's haul number in the mothership daily cumulative production logbook (DCPL). The final rule implements a method similar to the regulation that is used for assigning an unsorted codend to a CDQ group. The mothership will have 2 hours after completion of weighing all catch in the haul on the mothership to assign a haul to the PCTC Program. Also, NMFS changed the final rule to require the mothership to report the observer's haul number in the Mothership DCPL by 2400 hours, A.l.t., each day to record the previous day's delivery information. This change is necessary to accurately account for PCTC catch separate from other management programs.

At § 679.7(m)(2)(i), NMFS removed the phrase "while fishing under a CQ permit issued to a PCTC Program cooperative" to ensure that motherships and shoreside processors would not be excluded from the prohibition against failing to follow the catch monitoring requirements. At § 679.7(m)(4)(ii), NMFS clarified that it is unlawful for the manager of a shoreside processor or stationary floating processor to process any groundfish delivered by a CV fishing under the authority of a CQ permit not weighed on a scale approved by the State of Alaska. NMFS removed § 679.7(m)(5)(i), Fail to retain any Pacific cod caught by a vessel when that vessel is fishing under the authority of a CQ

permit, because improved retention/improved utilization (IR/IU) regulations at § 679.27(c)(2) already apply. NMFS removed § 679.7(m)(5)(iv) Operate a vessel fishing under the authority of a CQ permit issued to a PCTC Program cooperative and have any Pacific cod aboard the vessel unless those fish were harvested under the authority of a CQ permit, because this prohibition would prevent a mothership from possessing CDQ Program Pacific cod onboard the vessels at the same time as participating in the PCTC Program. This is not necessary because this final rule allows each haul delivered to a mothership to be assigned a management program code. NMFS also removed references to joint and several liability for violations because existing agency regulations at 15 CFR § 904.107 address joint and several liability for any civil penalties issued.

NMFS changed to Table 56 to part 679 to include Central GOA dusky rockfish and Central GOA Pacific ocean perch sideboard limits for non-exempt AFA CVs. This regulatory change was inadvertently left out in the proposed rule; however it was correctly described in the preamble to the proposed rule at Section VIII.A and in Table 3.

The proposed rule had erroneously removed the harvesting sideboards for AFA vessels at § 679.64(b)(3)(ii), (iv), and (4)(ii). In the final rule, NMFS added these paragraphs back in the regulations. At § 679.64(b)(3)(ii), NMFS specified that the BSAI Pacific cod harvesting sideboard applies only to C season. At §§ 679.64(b)(3)(iv) and 679.64(b)(4)(ii), NMFS corrected the regulation to state that non-exempt AFA CVs and the associated LLP licenses are also sideboarded upon implementation of the PCTC Program. At § 679.64(b)(4)(ii), NMFS also corrected the Gulf of Alaska halibut PSC limit for the non-exempt AFA CVs and associated LLP licenses.

At § 679.130(e), NMFS added that a PCTC Program processor eligible to receive an initial allocation of QS includes a processor that holds a valid FFP and an LLP license with a BSAI Pacific cod trawl mothership endorsement.

NMFS moved the paragraphs on the non-severability of Pacific cod legal landings and the exception provisions from § 679.130(f)(4) to § 679.130(i)(5), and made changes to the headings for consistency and convention. NMFS added that Pacific cod legal landings are non-severable from transferable AI endorsements. NMFS clarified in § 679.130(i)(5)(i) that, if multiple LLP licenses authorized catch by a vessel, the LLP license holders must submit to NMFS an agreement specifying the amount of shared catch history to assign to each LLP license with the application for PCTC Program QS.

At § 679.130(j)(3), NMFS clarified several transfer requirements for processor-held PCTC Program QS permits. First, processors that received an initial QS allocation must have an active FPP or FFP to receive benefits from their QS through associating with a cooperative. Second, any transfer of QS in excess of the ownership cap must be to another PCTC Program QS permit holder who remains below the ownership cap or a new processor with an active FPP. PCTC Program QS permits issued to shoreside processors can only be transferred to other shoreside processors that hold an FPP.

NMFS also added language to specify transfer restrictions for PCTC Program QS permits initially issued to an FFP holder. CPs acting as motherships may transfer their QS permit to the onshore or offshore sector, subject to eligibility requirements under Amendment 120 to limit CPs acting as motherships (*i.e.* may transfer QS permits to processors that hold a valid FPP or a valid FFP in addition to an LLP license with a BSAI Pacific cod trawl mothership endorsement).

At § 679.131(a)(1)(i), NMFS clarified that QS assigned to LLP licenses and PCTC Program QS permits held by a processor must be assigned to a cooperative through a CQ permit to use the CQ derived from that QS to catch Pacific cod, crab PSC, or halibut PSC assigned to the PCTC Program. NMFS removed the terms “process or receive” because the PCTC Program does not require a processor to hold QS or CQ to process or receive Pacific cod from cooperatives.

At § 679.131(a)(4)(viii), NMFS modified the text to accommodate cooperative formation prior to the first year of the PCTC Program in response to comment 49. NMFS will allow, for the calendar year 2023 only, for each cooperative to submit the inter-cooperative agreement to NMFS prior to December 31, 2023. This single year variation will give cooperatives additional time to come to an agreement after publication of the final rule. In all years after 2023, the inter-cooperative agreement must be submitted with the cooperative application no later than November 1 of each calendar year. The inter-cooperative agreement is required before NMFS issues CQ to each cooperative and fishing begins in A season (January 20). The inter-cooperative agreement must be submitted regardless of whether an Adak or Atka files a notice of intent to process with NMFS per § 679.132(b).

At § 679.131(i), NMFS modified language to reflect language in other catch share programs when referring to the NMFS online system used for inter-cooperative transfers. Instead of being specific to the current program, eFish, NMFS used “online system” to account for any future application naming conventions.

At § 679.131(j)(3)(i), NMFS clarified that in order for a cooperative to associate with a processor with an FFP, the vessel must be named on an LLP license with a BSAI Pacific cod trawl mothership endorsement in response to comment 40.

At § 679.132 (b)(5)(ii), NMFS modified this text to clarify that cooperatives must ensure that the PCTC Program harvests from the BS do not exceed the minimum AI CQ set-aside.

At § 679.132(c)(3) and (4), NMFS clarified language pertaining to the Regional Administrator removing the delivery requirement and the process for withdrawing a notice of intent to process, in response to comments 17 and 18. NMFS removed language at § 679.132(c)(4) regarding removing the projected unused AI set-aside to PCTC Program cooperatives in proportion to the amount of CQ that each PCTC Program



cooperative received in the initial allocation of CQ for the remainder of the A and B seasons. NMFS maintained in the regulations that the Regional Administrator may remove the delivery requirement for some or all of the projected unused AI CQ set-aside if the Regional Administrator determines that Aleutian Islands shoreplants will not process the entire AI CQ set-aside.

NMFS also removed language limiting when the City of Adak or City of Atka could withdraw their notice of intent to process. A notice of intent to process may be withdrawn at any time after it is submitted to NMFS. NMFS clarified that all notices of intent must be withdrawn for NMFS to remove the delivery requirements applicable when the AI CQ set-aside is in effect.

At § 679.133(a)(6)(iv), NMFS added language to exempt an Aleutian Islands shoreplant from processor use caps when the AI CQ set-aside is in effect.

At § 679.133(b)(2), based on comment 55, NMFS modified the text to reflect the Council recommendation that NMFS establish a sideboard limit for each LLP license with a BSAI Pacific cod trawl mothership endorsement not to exceed 125 percent of the CP's processing history. Processing Pacific cod by a CP acting as a mothership is limited by eligibility requirements under Amendment 120.

At § 679.135(d)(2)(iv), NMFS clarified that if a cooperative does not pay its cost recovery fees and a member of that cooperative leaves and joins another cooperative, NMFS will withhold any CQ generated by that person's QS until the original cooperative pays its delinquent cost recovery fee.

### **Classification**

Pursuant to section 304(b)(3) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with Amendment 122 to the BSAI FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

NMFS prepared an environmental assessment (EA) for this action and the AA concluded that there will be no significant impact on the human environment as a result of this rule. This action creates a LAPP to rationalize the BSAI Pacific cod trawl CV sector A and B seasons but will not result in significant changes to amount, timing, or location of total harvest, or result in other changes that would significantly impact the quality of the human environment. A copy of the EA is available from NMFS (see ADDRESSES).

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

#### *Small Entity Compliance Guide*

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as “small entity compliance guides.” The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. The preambles to the proposed rule and this final rule include a detailed description of the actions necessary to comply with this rule, and as part of this rulemaking process, NMFS included on its website a summary of compliance requirements that serves as the small entity compliance guide: <https://www.fisheries.noaa.gov/alaska/commercial-fishing/pacific-cod-trawl-cooperative-program>. This action does not require any additional compliance from small entities that is not described in the small entity compliance guide or the preambles to the proposed rule and this final rule. Copies of the proposed rule and this final rule are available from the NMFS website at <https://www.fisheries.noaa.gov/region/alaska>.

#### *Final Regulatory Flexibility Analysis (FRFA)*

This FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, NMFS' responses to those comments, and a summary of the analyses completed to support this action.

Section 604 of the Regulatory Flexibility Act (RFA) requires that, when an agency promulgates a final rule under section 553 of Title 5 of the U.S. Code, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a FRFA. Section 604 describes the required contents of a FRFA: 1) a statement of the need for and objectives of the rule; 2) a statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments; 3) the response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments; 4) a description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available; 5) a description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and 6) a description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in this final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

A description of this final rule and the need for and objectives of this rule are contained in the preamble to this final rule and the preamble to the proposed rule (88 FR 8592, February 9, 2023) and are not repeated here.

*Public and Chief Counsel for Advocacy Comments on the IRFA*

An IRFA was prepared in the Classification section of the preamble to the proposed rule. The Chief Counsel for Advocacy of the SBA did not file any comments on the proposed rule. NMFS received no comments specifically on the IRFA.

*Number and Description of Small Entities Regulated by this Final Rule*

This final rule directly regulates owners and operators of harvesters and processors that participate in the BSAI trawl CV Pacific cod fishery including 1) trawl CVs, 2) shoreside processors, 3) floating processors, 4) trawl CPs acting as motherships, and 5) small government jurisdictions in the AI. This rule may also impact observer providers that support the BSAI trawl CV Pacific cod fishery, but they are indirectly impacted. Therefore, observer providers are not considered directly regulated entities in the IRFA prepared for this action.

A small business includes any firm that is independently owned and operated and not dominant in its field of operation. Businesses classified as primarily engaged in commercial fishing are considered small entities if they have less than 11 million dollars in annual gross receipts for all businesses in the commercial fishing industry (NAICS 11411). The RFA requires consideration of affiliations between entities for the purpose of assessing whether an entity is classified as small. The AFA pollock cooperatives, which make up a subset of the entities regulated under this final rule, are types of affiliation between entities. All of the AFA cooperatives have gross annual revenues that are substantially greater than 11 million dollars. Therefore, NMFS considers members in these cooperatives to be “affiliated” large (non-small) entities for RFA purposes. The eligible AFA entities are large entities based on those affiliations. The remaining 13 trawl

CVs would be considered small entities. This count includes five trawl CVs that are greater than 60 ft (18.3 m) LOA and eight CVs that are less than 60 ft (18.3 m) LOA with a transferable AI endorsement.

Though CPs engage in both fish harvesting and fish processing activities, since at least 1993, NMFS Alaska Region has considered CPs to be predominantly engaged in fish harvesting rather than fish processing. Under this classification, the threshold of 11 million dollars in annual gross receipts is the appropriate threshold to apply to identify any CPs that are small entities. All the CPs that are directed regulated by this action do not meet the SBA definition of a small entity due to cooperative affiliation.

Under the SBA's size standard for "seafood product preparation and packaging" (NAICS code 311710), seafood processors are considered small entities if they are independently owned and operated, not dominant in their field of operation, and have a combined annual employment of fewer than 750 employees. Of the plants that took deliveries of Pacific cod from 2017 through 2019 that are currently in business, one firm would be considered a small entity.

The RFA defines "small governmental jurisdiction" as the government of a city, county, town, school district or special district with a population of less than 50,000 people. Two small governmental jurisdictions are directly regulated under the action. Adak and Atka would be required to submit a notice of their intent to process to NMFS to receive a portion of the AI CQ set-aside described in Section V of this preamble. The set-aside amount is intended to benefit the AI communities, and participation by these communities is voluntary.

#### *Recordkeeping, Reporting, and Other Compliance Requirements*

This action implements new recordkeeping, reporting, and compliance requirements and revises existing requirements. These requirements are necessary for the management and monitoring of the PCTC Program.

All PCTC program participants are required to provide additional information to NMFS for management purposes. Each harvester is required to track harvests to avoid exceeding their allocation. As in other North Pacific rationalized fisheries, processors provide catch recording data to managers to monitor harvest of allocations. Processors are required to record deliveries and processing activities to aid in the Program administration.

To participate in the Program, persons are required to complete application forms, transfer forms, reporting requirements, and monitoring requirements. These requirements impose costs on small entities in gathering the required information and completing the information collections.

NMFS has estimated the costs of complying with the requirements based on information such as the burden hours per response, number of responses per year, and wage rate estimates from industry or the Bureau of Labor Statistics. Persons are required to complete many of the requirements at the start of the Program, such as the application to participate in the Program. Persons are required to complete some requirements every year, such as the cooperative application. Additionally, reporting for purposes of catch accounting or transfer of CQ among cooperatives is completed more frequently. The impacts of these changes are described in more detail in Sections 2.10.7 and 2.10.12 of the Analysis prepared for this final rule (see ADDRESSES).

New requirements for the PCTC Program include the Application for PCTC Program QS, applications for transfer of QS during the 90-day transfer window, the Application for PCTC Program CQ, the Application for Transfer of PCTC Program QS for Processors, the AI notice of intent to process, inter-cooperative transfers, the appeals process, and cost recovery fee.

The initial allocation process requires all eligible harvesters and processors who want to participate in the PCTC Program to submit an Application for PCTC Program QS

to receive QS. This application is needed to determine the allocation of QS to eligible LLP licenses and to eligible processors. For harvesters, NMFS will use the Catch Accounting System data to determine how much Pacific cod was harvested using the LLP license authorizing a CV and ask the current LLP license holder to verify the catch estimate. For processors NMFS will use the Catch Accounting System data to determine the amount of qualifying Pacific cod delivered to the processor, and the processors will verify the estimates. That information will also be used to determine whether the QS holder complies with the ownership and use cap limitations imposed under the program. Allowing persons to harvest a given percentage of the fishery is anticipated to allow harvesters to avoid fishing in bad weather conditions, improving safety of the fleet. The fleet is also expected to be able to deliver a consistently higher quality product. Quality improvements are expected to result from shorter times between harvest and processing and less damage to the fish in the holds by not fishing in bad weather.

In addition, the initial allocation process has a 90-day transfer window to allow persons to transfer QS between non-exempt AFA LLP licenses under certain conditions to honor private contracts and agreements associated with harvest of the AFA Pacific cod sideboard limits. This transfer window allows persons to resolve any disputes or request QS transfers between LLP licenses. After the 90-day window for these transfers has closed, QS cannot be separated from an LLP license or transferable AI endorsement unless necessary to prevent exceedances of the ownership or use caps, or if required by an operation of law.

The PCTC Program includes a standardized appeals process. The appeals process provides participants the required opportunity to dispute the catch and processing history records in the Catch Accounting System that are used to determine a person's allocation of QS. The appeals process is in addition to the 90-day transfer window discussed above and open to all participants.

Each year the cooperative manager for each cooperative will be required to submit an Application for PCTC Program CQ that identifies the LLP licenses and processor QS permits named to the cooperative and the vessels allowed to harvest the CQ. This application includes the inter-cooperative agreement that defines how the AI CQ set-aside will be harvested during years it is in effect. The Council requests that cooperatives submit an annual cooperative report to the Council.

The Application of Transfer of PCTC Program QS for Processors will be required for eligible processors to transfer their QS to other processors. Processor QS assigned to a processor-held PCTC Program QS permit established under the PCTC program may be transferred through the NMFS online system with approval by NMFS.

The PCTC program requires the cooperatives to set aside 12 percent of their A season CQ allocation for delivery to Aleutian Islands shoreplants in years that a representative from the City of Adak or the City of Atka files a valid intent to process with NMFS. The notice of intent to process is necessary for NMFS and the cooperatives to know whether the regulations established for the set-aside are in effect during the A and B seasons. If a notice of intent to process is filed, it also triggers additional reporting in the cooperative report to the Council.

The PCTC Program is a LAPP, and therefore NMFS is required to collect fees for the PCTC Program under sections 303A and 304(d)(2) of the Magnuson-Stevens Act. Section 304(d)(2) of the Magnuson-Stevens Act limits the cost recovery fee so that it may not exceed 3 percent of the ex-vessel value of the Pacific cod harvested under the PCTC Program. Ex-vessel volume and value reports currently being used to establish an average annual price for BSAI trawl caught Pacific cod will be used to establish the standard price, and no additional collection of price data will be necessary. NMFS uses this information to meet the required provisions in sections 303A and 304(d) of the



Magnuson-Stevens Act that require NMFS to collect these fees associated with recoverable costs.

In addition to the new requirements, the PCTC Program revises existing requirements.

If LLP license holders want to transfer their LLP license or transferable AI endorsement and the associated PCTC Program QS, they must fill out an Application to Transfer a Groundfish or Crab LLP License. This form is revised to collect information on the PCTC QS transaction, including QS prices, amount transferred, and whether there are multiple transferees in the event ownership caps would otherwise be exceeded. Information is added to the LLP license transfer form identifying how PCTC QS would be distributed to the other LLP licenses if the original holder of the LLP license was assigned QS that was over the 5 percent ownership cap and qualified for the legacy exemption.

The PCTC Program requires updating ATLAS data transmission to enable the timely electronic entry, archival, and transmission of observer data for at-sea operations and shorebased processing plants.

This rule requires that all vessels submit logbooks when fishing in the PCTC program. All CVs greater than or equal to 60 ft (18.3 m) LOA currently submit logbooks. Some CVs that participate in the AI Pacific cod fishery are less than 60 ft (18.3 m) LOA and may already file logbooks when fishing for Pacific cod. Many already complete logbooks based on their participation in other programs. However, a small number of CVs less than 60 ft (18.3 m) LOA that do not currently submit a logbook will need to begin submitting a logbook if they choose to participate in the PCTC Program.

#### *Description of Significant Alternatives that Minimize Adverse Impacts on Small Entities*

The Council and NMFS considered an extensive and elaborate suite of alternatives, options, and sub-options as it designed and evaluated a quota share program

for the BSAI Pacific cod trawl CV sector, including a “no action” alternative. The Analysis presents the complete set of alternatives, in various combinations with the complex suite of elements and options. The Council selected a preferred alternative that includes a suite of elements and options to manage the BSAI trawl CV Pacific cod sector. The alternatives included no action (Alternative 1) and action to implement a cooperative-style LAPP for the BSAI Pacific cod trawl CV sector (Alternatives 2a and 2b and Alternative 3, which is the Council’s recommended action).

In general, the recommended LAPP includes allocations of QS to groundfish LLP licenses based on the legal landings of targeted BSAI Pacific cod in a Federal fishery during a range of qualifying years included in the options. The action also allocates QS to processors based on processing history of legal landings of BSAI Pacific cod harvested in a Federal fishery and deducted from the BSAI trawl CV sector apportionment during the qualifying years. One alternative considered but not selected included gear conversion, which would have authorized BSAI Pacific cod quota associated with trawl CV LLP licenses to be fished annually by CVs using pot gear. In the end, the Council did not include the gear conversion element in its preferred alternative due to concerns over the possibility of high crab PSC in pot gear for red king crab (Zone 1) and *C. opilio*.

A second option considered but removed was a cooperative formation approach based on existing AFA and non-AFA membership. The AFA vessels and non-AFA vessels would have formed their cooperatives independently of each other. A person owning both an AFA vessel and non-AFA vessel would have been required to join the AFA cooperative for the AFA vessel and the non-AFA cooperative for the non-AFA vessel. Allowing only an AFA and non-AFA cooperative was rejected by the Council after considering the obstacles it would create under the various program elements being considered by the Council and withdrawal of industry support for the option. Integrating multiple processors, the potential limitation on competition, and reduced cooperative

formation choice were ultimately the issues associated with the two cooperative approach that led to it being removed from consideration. The recommended action allows a cooperative to associate with one or more processor(s). This approach reduces antitrust concerns that were raised to the Council under the AFA and non-AFA cooperative structure.

The alternatives discussed in this section constitute the suite of “significant alternatives,” under this action, for purposes of the RFA. Based upon the best available scientific data, and consideration of the objectives of this action, NMFS did not identify alternatives to the action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the rule on small entities. After public process, the Council concluded that the PCTC Program would best accomplish the stated objectives articulated in the problem statement and applicable statutes, and minimize to the extent practicable adverse economic impacts on the universe of directly regulated small entities.

### **Paperwork Reduction Act**

This final rule contains collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This final rule contains new collections of information for the PCTC Program under new OMB Control Number 0648-0811 and revises requirements for collections of information under existing OMB Control Numbers 0648-0213 (Alaska Region Logbook and Activity Family of Forms); -0318 (North Pacific Observer Program); -0334 (Alaska License Limitation Program for Groundfish, Crab, and Scallops); -0711 (Alaska Cost Recovery and Fee Programs); -0678 (North Pacific Fishery Management Council Cooperative Annual Reports); and -0515 (Alaska Interagency Electronic Reporting System). However, because the collection of information authorized by OMB Control Number

0648-0515 is concurrently being revised in a separate action, the revisions to that collection of information in this rule will be assigned a temporary control number, 0648-0812, that will later be merged into 0648-0515. The existing collections of information under OMB Control Numbers 0648-0330 (NMFS Alaska Region Scale & Catch Weighing Requirements) and 0648-0445 (NMFS Alaska Region Vessel Monitoring System (VMS) Program) will also provide information needed to implement the PCTC Program and will continue to apply. This rule does not make changes to these two collections of information. The public reporting burden estimates provided below for these collections of information include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Control Number 0648-0811

This rule creates new collection of information requirements to implement PCTC Program. The new collections of information authorize applications and processes used by the PCTC Program cooperatives, processors, LLP license holders, and community representatives to apply for permits, to transfer CQ and QS, to manage fishing and processor activity, and to appeal agency decisions. These new collections are necessary for NMFS to implement, monitor, and enforce the PCTC Program. The data is used to ensure that program participants adhere to all harvesting, processing, ownership, and use limits.

The public reporting burden per individual response is estimated to average 2 hours for the Application for Pacific Cod Trawl Cooperative Program Quota Share, 2 hours for the Application for Pacific Cod Trawl Cooperative Program Cooperative Quota, 2 hours for the Application for Transfer of Pacific Cod Trawl Cooperative Program Quota Share for Processors, 10 minutes for the Application for Inter-Cooperative Transfer of Cooperative Quota, 30 minutes for the notification of intent to process

Aleutian Islands Pacific cod, 2 hours for the application to transfer QS during the 90-day transfer window for non-exempt AFA LLP license holders, and 4 hours for appeals.

OMB Control Number 0648-0213

This rule revises the existing requirements for the collection of information 0648-0213 related to logbooks because CVs participating in the PCTC Program are required to submit a CV trawl gear daily fishing logbook. Some CVs less than 60 ft (18.3 m) LOA that do not currently submit this logbook will need to begin doing so to participate in the PCTC Program. The revision to this collection of information adds as new respondents the CVs less than 60 ft (18.3 m) LOA that will need to start using the CV trawl gear daily fishing logbook. CVs participating in the PCTC Program have the option of using either the paper logbook approved under this collection or the electronic option, which is approved under OMB Control Number 0648-0515. The PCTC Program does not change the information collected by this logbook. This rule requires CPs and shoreside processors authorized as processors in the PCTC Program to submit a product transfer report. However, no changes are needed to the respondents or responses for this report because all expected respondents are currently submitting it. The public reporting burden per individual response is estimated to average 18 minutes for the Catcher Vessel Trawl Daily Fishing Log and 20 minutes for the Product Transfer Report.

OMB Control Number 0648-0318

This rule revises the existing requirements for the collection of information 0648-0318 related to the North Pacific Observer Program because all vessels participating in the PCTC program are required to have a computer onboard and use ATLAS to submit observer data to NMFS. This increases the number of vessels that need to provide observers access to a computer with ATLAS installed. PCTC Program participants have up to three years to install communication equipment to facilitate electronic transmission of observer data to NMFS. Most vessels comply with this requirement by allowing

NMFS to install ATLAS on an existing computer on the vessel. Many, if not all, of the vessels that will need to install ATLAS already have a computer that meets the minimum requirements, and they will incur costs only if they choose to purchase an additional computer. Estimated costs to purchase and install the data transmission system vary from about \$5,000 to \$37,000, depending on what a vessel needs to install. This rule also revises the existing requirements in this collection because CVs that choose to participate in the PCTC Program are required to be in the full observer coverage category instead of the partial observer coverage category. These CVs will no longer be required to use ODDS to log fishing trips; therefore, this decreases the number of respondents that log trips in ODDS. The public reporting burden per individual response is estimated to average 15 minutes to log a trip in ODDS.

OMB Control Number 0648-0334

This rule revises the existing requirements for the collection of information 0648-0334 related to the LLP license and the transferable AI endorsement to include PCTC Program QS information on the groundfish/crab LLP license transfer application form. The public reporting burden per individual response is estimated to average 1 hour for the Application for Transfer LLP Groundfish/Crab License.

OMB Control Number 0648-0812

This rule revises the collection of information under OMB Control Number 0648-0515 associated with electronic reporting. However, due to multiple concurrent actions for that collection, the collection-of-information requirements will be assigned a temporary control number, 0648-0812, that will later be merged into OMB Control Number 0648-0515.

PCTC Program participants need to use eLandings to submit landings and production information, which is approved under control number OMB 0648-0515. CVs participating in the PCTC Program are required to submit a CV trawl gear daily fishing

logbook and may use either the electronic logbook approved under OMB Control Number 0648-0515 or the paper logbook approved under OMB Control Number 0648-0213. CVs greater than 60 ft (18.3 m) LOA are already required to maintain logbooks but this is a new requirement for CVs less than 60 ft (18.3 m) LOA. Some CVs less than 60 ft (18.3 m) LOA that do not currently submit the logbook will need to begin doing so. The temporary control number covers the revisions necessary to -0515 for the CVs that choose to submit electronic logbooks. The PCTC Program does not change the information collected by this logbook but does increase the number of participants required to submit it. The public reporting burden per individual response is estimated to average 15 minutes for the CV electronic logbook.

A change from the proposed rule to the final rule adds a new reporting requirement for the mothership daily cumulative production logbook, which is approved under OMB Control Number 0648-0515. This revision to -0515 for the mothership logbook is included in this temporary control number. No changes are needed to the respondents or responses for the mothership logbook because all expected respondents are currently submitting it. No change was made to the public reporting burden because the estimate allows for differences in the time needed to complete and submit the information. The public reporting burden per individual response is estimated to average 15 minutes for the mothership logbook.

OMB Control Number 0648-0678

This rule revises the existing collection of information under 0648-0678 because the Council requests PCTC Program cooperatives submit a voluntary annual cooperative report to the Council. This revision adds the PCTC Program cooperatives as new respondents that will submit an annual cooperative report. The public reporting burden per individual response is estimated to average 18 hours for the PCTC Program annual report.

This rule revises the existing requirements for the collection of information 0648-0711 related to cost recovery because the PCTC Program is a LAPP that is subject to a cost recovery fee under Magnuson-Stevens Act 303A. This revision adds the PCTC Program cooperatives as new respondents that will submit a cost recovery fee to NMFS. The rule requires PCTC Program processors to submit an annual Pacific Cod Ex-vessel Volume and Value Report; however, this does not change the respondents or responses for this report because all expected respondents are currently submitting it. The public reporting burden per individual response is estimated to average 1 minute for the PCTC cost recovery fee and 1 minute for the Pacific Cod Ex-vessel Volume and Value Report.

#### Public Comments

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for these information collections should be submitted on the following website: [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find the particular information collection by using the search function and entering either the title of the collection or the OMB Control Number.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

#### List of Subjects

##### **15 CFR Part 902**

Reporting and recordkeeping requirements.

##### **50 CFR Part 679**



Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 28, 2023.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 15 CFR part 902 and 50 CFR part 679 as follows:

**Title 15—Commerce and Foreign Trade**

**PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER  
THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS**

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. Amend § 902.1, in the table in paragraph (b), under “50 CFR”, by:

a. Revising the entry for “679.4”;

b. Adding in numerical order an entry for “679.5(x)”;

c. Revising the entry for “679.7”;

d. Adding in numerical order an entry for “679.7(m)”;

e. Revising the entry for “679.51”; and

f. Adding in numerical order entries for “679.130” through “679.132”, “679.134”,  
and “679.135”.

The revisions and additions read as follows:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

\* \* \* \* \*

(b) \* \* \*

<b>CFR part or section where the information collection requirement is located</b>	<b>Current OMB control number (all numbers begin with 0648-)</b>
* * * * *	
<i>50 CFR</i>	
* * * * *	
679.4	-0206, -0272, -0334, -0393, -0513, -0545, -0565, -0665, and -0811
* * * * *	
679.5(x)	-0811
* * * * *	
679.7	-0206, -0269, -0272, -0316, -0318, -0330, -0334, -0393, -0445, -0513, -0514, -0545, -0565, and -0811
* * * * *	
679.7(m)	-0811
* * * * *	
679.51	-0206, -0269, -0272, -0318, -0401, -0513, -0545, -0565, and -0811
* * * * *	
679.130	-0811
679.131	-0811
679.132	-0811
679.134	-0811
679.135	-0811

* * * * *	
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**PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF  
ALASKA**

3. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, 3631 *et seq.*; Pub. L. 108–447;  
Pub. L. 111-281.

4. Amend § 679.2 by:

a. Removing the definition of “Affiliation for the purpose of defining AFA and the Rockfish Program”;

b. Adding in alphabetical order a definition for “Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program”;

c. Republishing the definition of “Aleutian Islands shoreplant”;

d. Revising the definitions of “Cooperative quota (CQ)” and “CQ permit”; and

e. Adding in alphabetical order definitions for “NMFS Alaska Region website,” “Pacific Cod Trawl Cooperative (PCTC) Program,” “PCTC Program cooperative,” “PCTC Program harvester QS pool,” “PCTC Program official record,” “PCTC Program participants,” “PCTC Program processor QS pool”, “PCTC Program QS unit,” and “PCTC Program quota share (QS)”.

The additions and revisions read as follows:

**§ 679.2 Definitions.**

\* \* \* \* \*

*Affiliation for the purpose of defining AFA, Rockfish Program, and PCTC Program* means a relationship between two or more individuals, corporations, or other business concerns, except CDQ groups, in which one concern directly or indirectly owns a 10 percent or greater interest in another, exerts control over another, or has the power to

exert control over another; or a third individual, corporation, or other business concern directly or indirectly owns a 10 percent or greater interest in both, exerts control over both, or has the power to exert control over both.

(1) *What is 10 percent or greater ownership?* For the purpose of determining affiliation, 10 percent or greater ownership is deemed to exist if an individual, corporation, or other business concern directly or indirectly owns 10 percent or greater interest in a second corporation or other business concern.

(2) *What is an indirect interest?* An indirect interest is one that passes through one or more intermediate entities. An entity's percentage of indirect interest in a second entity is equal to the entity's percentage of direct interest in an intermediate entity multiplied by the intermediate entity's direct or indirect interest in the second entity.

(3) *What is control?* For the purpose of determining affiliation, control is deemed to exist if an individual, corporation, or other business concern has any of the following relationships or forms of control over another individual, corporation, or other business concern:

(i) Controls 10 percent or more of the voting stock of another corporation or business concern;

(ii) Has the authority to direct the business of the entity that owns the fishing vessel or processor. The authority to direct the business of the entity does not include the right to simply participate in the direction of the business activities of an entity that owns a fishing vessel or processor;

(iii) Has the authority in the ordinary course of business to limit the actions of or to replace the chief executive officer, a majority of the board of directors, any general partner or any person serving in a management capacity of an entity that holds 10 percent or greater interest in a fishing vessel or processor. Standard rights of minority shareholders to restrict the actions of the entity are not included in this definition of

control provided they are unrelated to day-to-day business activities. These rights include provisions to require the consent of the minority shareholder to sell all or substantially all the assets, to enter into a different business, to contract with the major investors or their affiliates, or to guarantee the obligations of majority investors or their affiliates;

(iv) Has the authority to direct the transfer, operation, or manning of a fishing vessel or processor. The authority to direct the transfer, operation, or manning of a vessel or processor does not include the right to simply participate in such activities;

(v) Has the authority to control the management of or to be a controlling factor in the entity that holds 10 percent or greater interest in a fishing vessel or processor;

(vi) Absorbs all the costs and normal business risks associated with ownership and operation of a fishing vessel or processor;

(vii) Has the responsibility to procure insurance on the fishing vessel or processor, or assumes any liability in excess of insurance coverage;

(viii) Has the authority to control a fishery cooperative through 10 percent or greater ownership or control over a majority of the vessels in the cooperative, has the authority to appoint, remove, or limit the actions of or replace the chief executive officer of the cooperative, or has the authority to appoint, remove, or limit the actions of a majority of the board of directors of the cooperative. In such instance, all members of the cooperative are considered affiliates of the individual, corporation, or other business concern that exerts control over the cooperative; or

(ix) Has the ability through any other means whatsoever to control the entity that holds 10 percent or greater interest in a fishing vessel or processor.

\* \* \* \* \*

*Aleutian Islands shoreplant* means a processing facility that is physically located on land west of 170° W. longitude within the State of Alaska.

\* \* \* \* \*

*Cooperative quota (CQ)—(1) For purposes of the Amendment 80 Program*

means:

(i) The annual catch limit of an Amendment 80 species that may be caught by an Amendment 80 cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by an Amendment 80 cooperative while fishing under a CQ permit.

*(2) For purposes of the Rockfish Program means:*

(i) The annual catch limit of a rockfish primary species or rockfish secondary species that may be harvested by a rockfish cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut PSC that may be used by a rockfish cooperative in the Central GOA while fishing under a CQ permit (see rockfish halibut PSC in this section).

*(3) For purposes of the PCTC Program means:*

(i) The annual catch limit of Pacific cod that may be caught by a PCTC Program cooperative while fishing under a CQ permit;

(ii) The amount of annual halibut and crab PSC that may be used by a PCTC Program cooperative while fishing under a CQ permit.

\* \* \* \* \*

*CQ permit* means a permit issued to an Amendment 80 cooperative under § 679.4(o)(2), a rockfish cooperative under § 679.4(n)(1), or a PCTC Program cooperative under § 679.131(a).

\* \* \* \* \*

*NMFS Alaska Region website* means

*<https://www.fisheries.noaa.gov/region/alaska>.*

\* \* \* \* \*

*Pacific Cod Trawl Cooperative (PCTC) Program* means the Pacific Cod Trawl Cooperative Program as implemented under subpart L of this part.

\* \* \* \* \*

*PCTC Program cooperative* means a group of eligible Pacific cod harvesters who have chosen to form a cooperative and associate with a processor under the requirements at § 679.131 in order to combine and harvest fish collectively under a CQ permit issued by NMFS.

*PCTC Program harvester QS pool* means the sum of Pacific cod QS units assigned to LLP licenses established for the PCTC Program fishery based on the PCTC Program official record.

*PCTC Program official record* means information used by NMFS necessary to determine eligibility to participate in the PCTC Program and assign specific harvest privileges or limits to PCTC Program participants based on Pacific cod legal landings as defined at § 679.130.

*PCTC Program participants* means those PCTC Program harvesters and processors who receive, hold, or use PCTC Program QS.

*PCTC Program processor QS pool* means the sum of PCTC Program QS units assigned to processor permits issued under the PCTC Program based on the PCTC Program official record.

*PCTC Program QS unit* means a single share of the PCTC Program QS pool based on Pacific cod legal landings.

*PCTC Program quota share (QS)* means QS units issued by NMFS expressed in metric tons, derived from the Pacific cod legal landings assigned to an LLP license or PCTC Program QS permit held by a processor and used as the basis for the issuance of annual CQ.

\* \* \* \* \*

5. Amend § 679.4 by adding paragraphs (a)(1)(xvi), (k)(16), and (q) to read as follows:

**§ 679.4 Permits.**

(a) \* \* \*

(1) \* \* \*

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see .  ..
* * * * *		
(xvi) PCTC Program:		
(A) PCTC Program QS permit (for processors)	10 Years	Paragraph (q) of this section
(B) PCTC Program CQ permit	Until expiration date shown on permit	Paragraph (q) of this section

\* \* \* \* \*

(k) \* \* \*

(16) *PCTC Program*. In addition to other requirements of this part, an LLP license holder must have PCTC Program QS assigned to their groundfish LLP license to join a PCTC Program cooperative to harvest Pacific cod.

\* \* \* \* \*

(q) *PCTC Program permits*—(1) *PCTC Program cooperative quota permits*. (i) A CQ permit is issued annually to a PCTC Program cooperative that submits a complete and timely application for CQ as described at § 679.131 that is approved by the Regional Administrator. A CQ permit authorizes a PCTC Program cooperative to participate in the PCTC Program. The CQ permit will indicate the amount of Pacific cod that may be



harvested by the PCTC Program cooperative, and the amount of halibut PSC and crab PSC that may be used by the PCTC Program cooperative. The CQ permit will list the members of the PCTC Program cooperative, the trawl catcher vessels that are authorized to fish under the CQ permit for that cooperative, and the PCTC Program processor(s) with whom that cooperative is associated.

(ii) A CQ permit is valid only until the end of the BSAI Pacific cod B season for the year in which the CQ permit is issued;

(iii) A legible copy of a valid CQ permit must be carried on board the vessel(s) used by the PCTC Program cooperative.

(2) *PCTC Program quota share permits for processors.* (i) NMFS will issue PCTC Program QS permits to eligible processors if the owner(s) submits to the Regional Administrator a completed application for PCTC Program QS as described at § 679.130 that is subsequently approved.

(ii) A processor may associate the QS assigned to the PCTC Program QS permit with a PCTC Program cooperative as described at § 679.131.

6. Amend § 679.5 by:

a. Adding paragraph (a)(1)(iii)(G);

b. Revising paragraph (a)(4)(i)

c. Adding paragraph (c)(6)(v)(J)(I) and reserved paragraph (c)(6)(v)(J)(2); and

d. Adding paragraph (x).

The additions and revision read as follows:

**§ 679.5 Recordkeeping and reporting (R&R).**

(a) \* \* \*

(1) \* \* \*

(iii) \* \* \*

<b>If harvest made under . . . program</b>	<b>Record the . . .</b>	<b>For more information, see . . .</b>
--	-------------------------	--

\* \* \* \* \*

(G) PCTC Program Cooperative number subpart L to this part.

\* \* \* \* \*

(4) \* \* \*

(i) *Catcher vessels less than 60 ft (18.3 m) LOA.* Except for vessels using pot gear as described in paragraph (c)(3)(i)(B)(I) of this section or vessels participating in the PCTC Program as described in paragraph (x) of this section, the owner and operator of a catcher vessel less than 60 ft (18.3 m) LOA are not required to comply with the R&R requirements of this section, but must comply with the vessel activity report described at paragraph (k) of this section.

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(v) \* \* \*

(J) \* \* \*

(I) For the PCTC Program, enter the observer's haul number for each catcher vessel delivery of an unsorted codend by 2400 hours, A.l.t., each day to record the previous day's delivery information.

(2) [Reserved]

\* \* \* \* \*

(x) *PCTC Program.* The owners and operators of catcher vessels and processors authorized as participants in the PCTC Program must comply with the applicable R&R requirements of this section and must assign all catch to a PCTC Program cooperative at the time of catch or receipt of groundfish. Owners of catcher vessels and processors

authorized as participants in the PCTC Program must ensure that their designated representatives or employees comply with applicable R&R requirements as described at § 679.134.

7. Amend § 679.7 b adding paragraph (m) to read as follows:

**§ 679.7 Prohibitions.**

\* \* \* \* \*

(m) *PCTC Program*—(1) *General*. (i) Name an LLP license in more than one Application for PCTC Program CQ in a fishing year.

(ii) Use a vessel to catch or receive a PCTC Program cooperative's Pacific cod when that vessel was not listed on the Application for PCTC Program CQ.

(iii) Fail to comply with any other requirement or restriction specified in this part or violate any provision of this part.

(2) *Vessel owners and operators participating in the PCTC Program*. (i) Fail to follow the catch monitoring requirements detailed at § 679.134.

(ii) Operate a vessel that is subject to a sideboard limit detailed at § 679.133, as applicable, and fail to follow the catch monitoring requirements detailed at § 679.134.

(iii) Exceed the ownership or use caps specified at § 679.133.

(3) *VMS*. (i) Operate a vessel in a PCTC Program cooperative and fail to use functioning VMS equipment as described at § 679.134.

(ii) Operate a vessel that is subject to a sideboard limit detailed at § 679.133 and fail to use functioning VMS equipment as described at § 679.134.

(4) *PCTC Program processors*. (i) Take deliveries of, or process, PCTC Program Pacific cod harvested by a catcher vessel fishing under the authority of a CQ permit unless the processor has an FPP or FFP and LLP license with a BSAI Pacific cod trawl mothership endorsement.

(ii) For the manager of a shoreside processor or stationary floating processor to process any groundfish delivered by a catcher vessel fishing under the authority of a CQ permit not weighed on a scale approved by the State of Alaska.

(iii) Fail to submit a timely and complete Pacific cod Ex-vessel Volume and Value Report as required under § 679.5(u)(1).

(iv) Use a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement to sort, process, or discard any species, except halibut sorted on deck by vessels participating in halibut deck sorting described at § 679.120, before the total catch is weighed on a scale that meets the requirements of § 679.28(b).

(v) Use a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement to process Pacific cod in excess of the at-sea processing sideboard limit defined at § 679.133(b)(2) and assigned to the LLP license.

(vi) Process an amount of Pacific cod that exceeds use caps specified at § 679.133.

(5) *PCTC Program cooperatives.* (i) Harvest PCTC Program Pacific cod, use halibut PSC, or use crab PSC assigned to a PCTC Program cooperative in the BSAI without having on board a legible copy of valid CQ permit.

(ii) Begin a fishing trip for PCTC Program Pacific cod with any vessel named in a PCTC Program cooperative if the total amount of unharvested PCTC Program Pacific cod on a CQ permit currently held by that cooperative is zero or less.

(iii) Have a negative balance in a CQ account after the end of the calendar year for which a CQ permit was issued.

(iv) Fail to submit a PCTC Program cost recovery fee payment as required under § 679.135.

\* \* \* \* \*

8. Amend § 679.20 by revising paragraph (a)(7)(viii) and adding paragraph (e)(3)(vi) to read as follows:

**§ 679.20 General limitations.**

\* \* \* \* \*

(a) \* \* \*

(7) \* \* \*

(viii) *Aleutian Islands CQ set-aside provisions.* During the annual harvest specifications process, the Regional Administrator will establish the PCTC Program Aleutian Islands CQ set-aside through the process set forth at § 679.132.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(vi) For a catcher/processor with a BSAI Pacific cod trawl mothership endorsement that receives an unsorted codend delivered by a catcher vessel authorized to harvest and that is assigned to PCTC Program Pacific cod, the maximum retainable amount for each species or species group applies at any time for the duration of the fishing trip and must be applied to only the PCTC Program hauls during a fishing trip.

\* \* \* \* \*

9. Amend § 679.21 by revising paragraphs (b)(1)(ii)(B) introductory text, (b)(1)(ii)(B)(5), (b)(2)(iii)(A) and (B), (b)(4)(i)(B), (e)(3)(iv) introductory text, and (e)(3)(iv)(E) and adding paragraph (e)(7)(v) to read as follows:

**§ 679.21 Prohibited species bycatch management.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(B) *Trawl fishery categories.* For purposes of apportioning the trawl PSC limit set forth under paragraph (b)(1)(ii)(A)(I) of this section among trawl fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

\* \* \* \* \*

(5) *Pacific cod fishery.* Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (b)(1)(ii)(B). This Pacific cod fishery is further apportioned between the PCTC Program, the trawl catcher vessel limited access C season, and AFA catcher/processors as established at § 679.131(c) and (d).

\* \* \* \* \*

(2) \* \* \*

(iii) \* \* \*

(A) *Unused seasonal apportionments.* Unused seasonal apportionments of trawl fishery PSC allowances made under this paragraph (b)(2) will be added to the respective fishery PSC allowance for the next season during a current fishing year except for the Pacific cod fishery apportionment to the PCTC Program, which follows the regulations at § 679.131(c) and (d).

(B) *Seasonal apportionment exceeded.* If a seasonal apportionment of a trawl fishery PSC allowance made under this paragraph (b)(2) is exceeded, the amount by which the seasonal apportionment is exceeded will be deducted from the respective apportionment for the next season during a current fishing year except for the Pacific cod fishery apportionment to the PCTC Program, which follows the regulations at § 679.131(c) and (d).

\* \* \* \* \*

(4) \* \* \*

(i) \* \* \*

(B) *Closures*. Except as provided in paragraph (b)(4)(i)(A) of this section, if, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the trawl fishery categories listed in paragraphs (b)(1)(ii)(B)(2) through (6) of this section will catch the halibut PSC allowance, or seasonal apportionment thereof, specified for that fishery category under paragraph (b)(1)(i) or (ii) of this section, NMFS will publish in the **Federal Register** a document to close the entire BSAI to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season. This does not apply to allocations to the PCTC Program specified at § 679.133(b).

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(iv) *Trawl fishery categories*. For purposes of apportioning trawl PSC limits for crab and herring among fisheries, other than crab PSC CQ assigned to an Amendment 80 cooperative, the following fishery categories are specified and defined in terms of round-weight equivalents of those groundfish species or species groups for which a TAC has been specified under § 679.20.

\* \* \* \* \*

(E) *Pacific cod fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of Pacific cod that is greater than the retained amount of any other groundfish fishery category defined under this paragraph (e)(3)(iv). The Pacific cod fishery is further apportioned between the PCTC Program, the trawl catcher vessel limited access C season, and AFA catcher/processors as established at § 679.131(d).

\* \* \* \* \*

(7) \* \* \*

(v) This paragraph (e)(7) does not apply to apportionments to the PCTC Program as described at § 679.130.

\* \* \* \* \*

10. Amend § 679.51 by:

- a. Revising paragraph (a)(2)(i)(C)(4);
- b. Adding paragraphs (a)(2)(i)(C)(5) and (a)(2)(vi)(G);
- c. Revising paragraphs (e)(1)(iii)(A) and (e)(1)(iii)(B) introductory text; and
- d. Adding paragraph (e)(1)(iii)(D).

The revisions and additions read as follows:

**§ 679.51 Observer and Electronic Monitoring System requirements for vessels and plants.**

(a) \* \* \*

(2) \* \* \*

(i) \* \* \*

(C) \* \* \*

(4) Using trawl gear in the BSAI if the vessel has been placed in the full observer coverage category under paragraph (a)(4) of this section; or

(5) Participating in the PCTC Program.

\* \* \* \* \*

(vi) \* \* \*

(G) *PCTC Program motherships*. A mothership that receives unsorted codends from catcher vessels harvesting Pacific cod under the PCTC Program must have at least two observers aboard the mothership, at least one of whom must be endorsed as a lead



level 2 observer. More than two observers must be aboard if the observer workload restriction would otherwise preclude sampling as required.

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) *Observer use of equipment.* Allow an observer to use the vessel's communications equipment and personnel, on request, for the confidential entry, transmission, and receipt of work-related messages (including electronic transmission of data), at no cost to the observer or the United States.

(B) *Equipment, software, and data transmission requirements.* The operator of a catcher/processor (except for a catcher/processor placed in the partial observer coverage category under paragraph (a)(3) of this section), mothership, catcher vessel 125 ft (38.1 m) LOA or longer (except for a catcher vessel fishing for groundfish with pot gear), or a catcher vessel participating in the PCTC Program (except for paragraph (e)(1)(iii)(D) of this section) must provide the following equipment, software and data transmission capabilities:

\* \* \* \* \*

(D) *PCTC Program.* The operator of a non-AFA catcher vessel participating in the PCTC Program is not required to comply with paragraph (e)(1)(iii)(B)(3) of this section to provide data transmission capability until September 7, 2026. However, once any non-AFA catcher vessel in the PCTC Program is capable of at-sea data transmission, the operator must comply.

\* \* \* \* \*

11. Amend § 679.64 by revising paragraphs (b)(3)(ii) and (iv), removing and reserving paragraph (b)(4)(i), and revising paragraph (b)(4)(ii).

The revisions read as follows:

**§ 679.64 Harvesting sideboard limits in other fisheries.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(ii) *BSAI Pacific cod*. The AFA catcher vessel groundfish harvest limit for BSAI Pacific cod will be equal to the retained catch of BSAI Pacific cod in 1997 by AFA catcher vessels not exempted under paragraph (b)(2)(i)(A) of this section divided by the BSAI Pacific cod TAC available to catcher vessels in 1997; multiplied by the BSAI Pacific cod TAC available to catcher vessels in the year or season in which the harvest limit will be in effect. This limit is in effect only for C season.

\* \* \* \* \*

(iv) *GOA groundfish*. The non-exempt AFA catcher vessels and the associated LLP licenses groundfish harvest limit for each GOA groundfish species or species group will be equal to the aggregate retained catch of that groundfish species or species group from 2009 through 2019 by AFA catcher vessels not exempted under paragraph (b)(2)(ii) of this section; divided by the sum of the TACs of that species or species group available to catcher vessels from 2009 through 2019; multiplied by the TAC available to catcher vessels in the year or season in which the harvest limit will be in effect.

\* \* \* \* \*

(4) \* \* \*

(ii) The non-exempt AFA catcher vessels and the associated LLP licenses PSC bycatch limit for halibut in the GOA will be an annual amount based on a static ratio of 0.072 derived from the aggregate retained groundfish catch by non-exempt AFA CVs in each PSC target category from 2009 through 2019.

\* \* \* \* \*

12. Add subpart L, consisting of §§ 679.130 through 679.135, to read as follows:

**Subpart L — Pacific Cod Trawl Cooperative Program**

Sec.

679.130 Allocation, use, and transfer of PCTC Program QS permits.

679.131 PCTC Program annual harvester privileges.

679.132 Aleutian Islands CQ set-aside provisions in the PCTC Program.

679.133 PCTC Program ownership caps, use caps, and sideboard limits.

679.134 PCTC Program permits, catch monitoring, catch accounting, and recordkeeping and reporting.

679.135 PCTC Program cost recovery.

**Subpart L – Pacific Cod Trawl Cooperative Program**

**§ 679.130 Allocation, use, and transfer of PCTC Program QS permits.**

(a) *Applicable areas and seasons.* (1) The PCTC Program applies to the Pacific cod trawl catcher vessel sector in the BSAI as defined at § 679.20(a)(7)(ii)(A).

(2) The following fishing seasons apply to fishing under this subpart subject to other provisions of this part:

(i) Fishing by vessels participating in a cooperative is authorized for the PCTC Program A season from 1200 hours, A.l.t., January 20 through 1200 hours, A.l.t., April 1.

(ii) Fishing by vessels participating in a cooperative is authorized for the PCTC Program B season from 1200 hours, A.l.t., April 1 through 1200 hours, A.l.t., June 10.

(iii) The PCTC Program does not apply to the Pacific cod trawl catcher vessel C season, as defined at § 679.23(e)(5)(ii)(C)(1).

(b) *Pacific cod legal landings.* Pacific cod legal landings means the retained catch of Pacific cod caught using trawl gear in a management area in the BSAI by a catcher vessel during the directed fishing season for Pacific cod that:

(1) Was made in compliance with State and Federal regulations in effect at that time; and

(2) Was recorded on a State of Alaska fish ticket for shoreside deliveries or in observer data for mothership deliveries; and

(3) Was the predominately retained species on the fishing trip; and

(4) Was authorized by:

(i) An LLP license and caught in the A or B season of a Federal or parallel groundfish fishery during the qualifying years 2009 through 2019; or

(ii) An LLP license with a transferable AI endorsement prior to receiving the AI endorsement and was caught in a parallel fishery between January 20, 2004, and September 13, 2009; and

(5) Was not made in a CDQ fishery; and

(6) Was not made in a State of Alaska GHF fishery.

(c) *Eligible PCTC Program harvesters.* NMFS will assign Pacific cod legal landings to an LLP license only if the qualifying Pacific cod legal landings of BSAI trawl catcher vessel Pacific cod were made under the authority of a fully transferable LLP license endorsed for BS or AI Pacific cod with a trawl gear designation from 2009 through 2019 or under the authority of an LLP license endorsed for Pacific cod with a trawl gear designation prior to earning a transferable AI endorsement from 2004 through September 13, 2009;

(d) *Assigning trawl catcher vessel Pacific cod legal landings to an LLP license.*

(1) NMFS will assign Pacific cod legal landings to an LLP license in the form of PCTC Program QS only if the holder of the LLP license that authorized those landings submits a timely and complete application for PCTC Program QS under paragraph (h) of this section that is approved by NMFS.

(2) NMFS will assign Pacific cod legal landings to an LLP license that meets the requirements of paragraph (b) of this section.

(3) NMFS will reissue LLP licenses to eligible harvesters that specify the number of PCTC Program QS units assigned to their LLP licenses.

(e) *Eligible PCTC Program processors.* NMFS will assign legal landings to an eligible PCTC Program processor if the processor operates under the authority of either a valid FPP or FFP and holds an LLP license with a BSAI Pacific cod trawl mothership endorsement, and received deliveries of legal landings of Pacific cod from the trawl catcher vessel sector from 2009 through 2019. A processor is ineligible to receive PCTC Program QS if it does not hold an active FFP or FPP as of September 7, 2023.

(f) *Assigning Pacific cod processing history to an eligible processor.* (1) NMFS will assign Pacific cod processing history to a processor in the form of PCTC Program QS only if the FFP or FPP holder submits a timely and complete application for PCTC Program QS that is approved by NMFS pursuant to paragraph (h) of this section.

(2) NMFS will assign Pacific cod processing history based on legal landings delivered to a processor authorized by an FPP or FFP that meets the requirements of this section.

(3) For the initial allocation of PCTC Program QS, qualifying processing history is attached to the processor at the time legal landings were received.

(4) An eligible processor will be issued a PCTC Program QS permit that specifies the number of QS units assigned to that processor.

(g) *PCTC Program official record.* (1) The PCTC Program official record will contain information used by the Regional Administrator to determine:

(i) The amount of Pacific cod legal landings as defined at in this section assigned to an LLP license;

(ii) The amount of Pacific cod processing history of legal landings as defined at § 679.130 assigned to an FPP or FFP;

(iii) The amount of PCTC Program QS resulting from Pacific cod legal landings assigned to an LLP license held by an eligible harvester, or QS resulting from Pacific cod processing history assigned to an FPP or FFP held by an eligible processor;

- (iv) The amount of Pacific cod sideboard ratios assigned to LLP licenses;
- (v) Eligibility to participate in the PCTC Program; and
- (vi) QS assigned to PCTC Program participants.

(2) The PCTC Program official record is presumed to be correct. An applicant participating in the PCTC Program has the burden to prove otherwise.

(3) Only Pacific cod legal landings and processing history of legal landings, as described in paragraph (b) of this section, shall be used to establish an allocation of PCTC Program QS. Evidence of legal landings shall be limited to documentation of state or Federal catch reports that indicate the amount of Pacific cod harvested, the groundfish reporting area in which it was caught, the vessel and gear type used to catch it, and the date of harvesting, landing, or reporting.

(h) *Application for PCTC Program quota share—(1) Submission of an application for PCTC Program quota share.* A person who wishes to receive QS to participate in the PCTC Program as an eligible harvester or an eligible processor must submit a timely and complete application for PCTC Program QS. An application form will be provided by NMFS or available from NMFS Alaska Region website as defined at § 679.2. The acceptable submittal methods will be described on the application form.

(2) *Deadline.* A completed application for PCTC Program QS must be received by NMFS no later than 1700 hours, A.l.t., on October 10, 2023, or if sent by U.S. mail, postmarked by that time. Objective written evidence of timely application will be considered proof of a timely application.

(3) *Contents of application.* A timely and complete application must contain the information specified on the application for PCTC Program QS with all required documentation attached.

(i) Additional required documentation for LLP license holders. Vessel names, ADF&G vessel registration numbers, and USCG documentation numbers of all vessels

that fished under the authority of each LLP license, including dates when landings were made under the authority of an LLP license from 2009 through 2019 or under the authority of an LLP license prior to earning a transferable AI endorsement from 2004-2019;

(ii) Additional required documentation for processors. Processor name, FFP or FPP number, and location of processing plant, including dates when landings were made under the authority of an LLP license from 2009 through 2019;

(iii) The applicant must sign and date the application certifying under penalty of perjury that all information is true and correct. If the application is completed by a designated representative, then explicit authorization signed by the applicant must accompany the application.

(4) *Application evaluation.* The Regional Administrator will evaluate applications and compare all claims of catch history or processing history in an application with the information in the PCTC Program official record. Application claims that are consistent with information in the PCTC Program official record will be approved by the Regional Administrator. Application claims that are inconsistent with the PCTC Program official record will not be approved unless supported by documentation sufficient to substantiate such claims. An applicant who submits claims of catch history or processing history that are inconsistent with the official record without sufficient evidence, or an applicant who fails to submit the information specified in paragraph (d) of this section, will be provided a single 30-day evidentiary period to submit the specified information, submit evidence to verify their claims of catch or processing history, or submit a revised application consistent with information in the PCTC Program official record. An applicant who claims catch or processing history that is inconsistent with information in the PCTC Program official record has the burden of proving that the submitted claims are correct. Any claims that remain unsubstantiated after the 30-day evidentiary period will be

denied. All applicants will be notified of NMFS's final application determinations by an initial administrative determination (IAD), which will inform applicants of their appeal rights under 15 CFR part 906.

(5) *Appeals*. An applicant may appeal an IAD under the provisions in 15 CFR part 906.

(i) *Assigning PCTC Program QS to Harvesters and Processors*. The Regional Administrator will assign PCTC Program QS only to an eligible harvester or eligible processor who submits a timely application for PCTC Program QS that is approved by NMFS.

(1) *Calculation of PCTC Program QS allocation to LLP licenses without a transferable AI endorsement*. NMFS will assign a specific amount of PCTC Program QS units to each LLP license based on the Pacific cod legal landings of each LLP license using information from the PCTC Program official record according to the following procedures:

(i) Determine the Pacific cod legal landings for each LLP license for each calendar year from 2009 through 2019.

(ii) Select the 10 calendar years from the qualifying time period with the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest 10 years for each LLP license. This yields the PCTC Program QS units (in metric tons) for each LLP license.

(2) *Calculation of PCTC Program QS allocation to LLP licenses with a transferable AI endorsement*. NMFS will assign a specific amount of PCTC Program QS units to each LLP license with a transferable AI endorsement based on the Pacific cod legal landings of each using information from the PCTC Program official record according to the following procedures:



(i) Determine the Pacific cod legal landings for each LLP license with a transferable AI endorsement for each calendar year from 2004 through 2019.

(ii) Select the fifteen calendar years that yield the highest amount of legal landings for each LLP license, including years with zero metric tons if necessary.

(iii) Sum the Pacific cod legal landings of the highest fifteen years for each LLP license with transferable AI endorsement. This yields the PCTC Program QS units (in metric tons) for each LLP license with a transferable AI endorsement.

(3) *Official record date.* The initial PCTC Program QS pool for all LLP licenses, with and without a transferable AI endorsement, is the sum of the sum of the PCTC Program QS units assigned to all LLP licenses in metric tons based on the PCTC Program official record as of December 31, 2022.

(4) *Calculation of PCTC Program QS allocation to processors.* NMFS will assign a specific amount of PCTC Program QS units to each eligible processor based on the Pacific cod legal landings delivered to each FPP or FFP using information from the PCTC Program official record according to the following procedures:

(i) Sum the Pacific cod legal landings delivered to each FPP or FFP for each calendar year from 2009 through 2019;

(ii) Select the ten calendar years that yield the highest amount of legal landings delivered to each FPP or FFP, including years with zero metric tons if necessary;

(iii) Sum the Pacific cod legal landings of the highest 10 years for each FPP or FFP. This yields the QS units for each eligible processor, which will be specified on a PCTC Program QS permit for that processor;

(iv) The PCTC Program QS pool for processors is the sum of all QS units assigned to processors in metric tons based on the PCTC official record as of December 31, 2022.

(5) *Non-severability and exceptions.* Pacific cod legal landings are non-severable from the LLP license, transferable AI endorsement, or FPP to which those Pacific cod legal landings are assigned in the PCTC Program official record except under the following provisions:

(i) If multiple LLP licenses authorized catch by a vessel, the LLP license holders must submit to NMFS an agreement specifying the amount of shared catch history to assign to each LLP license with the application for PCTC Program QS. In the absence of an agreement, the owner of the vessel that made the catch will assign qualifying catch history to each LLP license.

(ii) For the LLP licenses associated with non-exempt AFA catcher vessels, within 90 days of initial issuance of PCTC Program QS, the owners of the LLP licenses that are associated with AFA non-exempt catcher vessels that engaged in fish transfer agreements during the qualifying periods may transfer PCTC Program QS to other LLP licenses associated with AFA non-exempt vessels, subject to the ownership cap at § 679.133.

(A) NMFS will execute permanent transfers of PCTC Program QS between eligible LLP licenses during the 90-day transfer provision upon request. The transferor and transferee must show they agree to the one-time permanent transfer of PCTC Program QS, or show a transfer is authorized by an operation of law (*e.g.* a court order). Requests to transfer PCTC Program QS must specify which LLP license is transferring PCTC Program QS, which LLP license is receiving PCTC Program QS, and the amount of PCTC Program QS to be transferred.

(B) After the expiration of the 90-day transfer provision, PCTC Program QS will no longer be severable from the LLP license to which it is assigned unless authorized by the transfer rules specified in paragraph (j) or modification is supported by an operation of law.

(j) *Transfer of PCTC Program QS.* (1) Transfer of an LLP license with PCTC Program QS. A person may transfer an LLP license and the PCTC Program QS assigned to that LLP license under the provisions at § 679.4(k)(7), provided that the LLP license is not assigned PCTC Program QS in excess of the ownership cap specified at § 679.133 at the time of transfer.

(2) Transfer of PCTC Program QS assigned to LLP licenses that exceeds PCTC Program QS ownership caps.

(i) If an LLP license receives an initial allocation of PCTC Program QS that exceeds an ownership cap specified at § 679.133(a), upon transfer of the LLP license, the LLP license holder may transfer the amount of PCTC Program QS in excess of the ownership cap separately from the LLP license and assign it to one or more LLP licenses. However, a transfer will not be approved by NMFS if that transfer would cause the receiving LLP license to exceed an ownership cap specified at § 679.133(a).

(ii) Prior to the transfer of an LLP license that received an initial allocation of PCTC Program QS that exceeds an ownership cap specified at § 679.133(a), the LLP license holder must transfer the PCTC Program QS that is in excess of the ownership cap separately from that LLP license and assign it to one or more LLP licenses. On completion of the transfer of PCTC Program QS, the LLP license that was initially allocated an amount of PCTC Program QS in excess of the ownership cap may not exceed any ownership cap specified at § 679.133(a).

(iii) Any PCTC Program QS associated with the LLP license that is in excess of the ownership cap may be assigned to another LLP license through the application used to transfer LLP licenses, and only if the application is approved as specified at § 679.4(k)(7).

(iv) PCTC Program QS that is transferred from an LLP license that was initially allocated an amount of PCTC Program QS in excess of the ownership cap specified at §

679.133(a) and assigned to another LLP license may not be severed from the receiving LLP license.

(3) Transfer of processor PCTC Program QS Permits. A person may transfer a PCTC Program QS permit to another processor with an active FPP issued under § 679.4. A transfer of processor-held PCTC Program QS may not cause the receiver of the permit to exceed the ownership cap specified at § 679.133(a) at the time of transfer. A PCTC Program QS permit held by a processor and associated QS may be transferred only if the application for transfer of PCTC Program QS permit is filled out entirely. A PCTC Program QS permit initially issued to an FFP holder may be transferred to a processor with an active FPP issued under § 679.4 or to a processor with an active FFP that authorizes a vessel named on an LLP license with a BSAI Pacific cod trawl mothership endorsement.

(4) Transfer of PCTC Program QS assigned to a processor-held PCTC Program QS permit that exceeds PCTC Program ownership caps.

(i) If a PCTC Program QS permit receives an initial allocation of QS that exceeds an ownership cap specified at § 679.133(a), the processor may transfer QS in excess of the ownership cap separately from that PCTC Program QS permit and assign it to the PCTC Program QS permit of one or more processors with an active FPP or FFP. However, a transfer will not be approved by NMFS if that transfer would cause the receiving processor to exceed an ownership cap specified at § 679.133(a).

(ii) Prior to the transfer of a PCTC Program QS permit that received an initial allocation of QS that exceeds an ownership cap specified at § 679.133(a), the permit holder must transfer the QS that is in excess of the ownership cap separately from that PCTC Program QS permit and assign it to one or more PCTC Program QS permits. On completion of the transfer of QS, the PCTC Program QS permit that was initially

allocated an amount of QS in excess of the ownership cap may not exceed any ownership cap specified at § 679.133(a).

(iii) Any QS associated with the PCTC Program QS permit held by a processor that is in excess of an ownership cap may be transferred only if the application for transfer of PCTC Program QS permit is filled out entirely.

**§ 679.131 PCTC Program annual harvester privileges.**

(a) *Assigning CQ to a PCTC Program cooperative—*(1) *General.* (See also § 679.4(q)). (i) Every calendar year, PCTC Program QS assigned to LLP licenses and PCTC Program QS permits held by a PCTC Program processor must be assigned to a PCTC Program cooperative through a CQ permit to use the CQ derived from that PCTC Program QS to catch Pacific cod, crab PSC, or halibut PSC assigned to the PCTC Program.

(ii) NMFS will issue a CQ permit to a PCTC Program cooperative based on the aggregate PCTC Program QS of all LLP licenses and associated processors designated on an application for CQ that is approved by the Regional Administrator as described under paragraph (a)(4) of this section.

(iii) Processors must associate with a PCTC Program cooperative for the PCTC Program QS assigned to that processor's PCTC Program QS permit to be issued to a PCTC Program cooperative as CQ.

(2) *PCTC Program QS issued after issuance of CQ or Pacific cod trawl catcher vessel sector TAC.* Any PCTC Program QS assigned to an LLP license or PCTC Program QS permit after NMFS has issued CQ for a calendar year will not result in any additional CQ being issued to a PCTC Program cooperative even if that QS holder has assigned their LLP license or PCTC Program QS permit to a PCTC Program cooperative for that calendar year.

(3) *Failure to designate QS to a PCTC Program cooperative.* Failure to designate an LLP license with PCTC Program QS or a PCTC Program QS permit on a timely and complete application for CQ that is approved by the Regional Administrator as described under paragraph (a)(4) of this section, will result in the Regional Administrator not assigning that QS to a PCTC Program cooperative for the applicable calendar year.

(4) *Application for PCTC Program CQ.* PCTC Program cooperatives must submit a complete application by November 1 to receive CQ that includes the following:

- (i) PCTC Program cooperative identification, including but not limited to the name of the cooperative and the taxpayer identification number;
- (ii) PCTC Program QS holders and ownership documentation;
- (iii) PCTC Program cooperative member vessels and LLP licenses;
- (iv) PCTC Program cooperative associated processors;
- (v) Vessels with FFPs on which the CQ issued to the PCTC Program cooperative will be used;
- (vi) Certification of cooperative representative;
- (vii) An attached copy of the membership agreement or contract that includes the following terms:
  - (A) How the cooperative intends to harvest its CQ;
  - (B) The obligations of QS holders who are members of a PCTC Program cooperative to ensure the full payment of PCTC Program fee liabilities that may be due;
  - (C) How cooperatives monitor and report leasing activity in GOA fisheries; and
  - (D) For a cooperative intending to harvest any amount of the CQ set-aside, the cooperative's plan for coordinating harvest and delivery of the CQ set-aside with an Aleutian Islands shoreplant as defined § 679.2.
- (viii) Each year, all cooperatives must establish an inter-cooperative agreement.

This inter-cooperative agreement must be included as part of each annual cooperative

application and is required before NMFS will issue CQ. The inter-cooperative agreement must establish how the cooperatives intend to harvest the CQ set-aside in years when it applies and ensure harvests in the BS do not exceed the minimum set-aside as specified at § 679.132(a)(4)(i). For the calendar year 2023, NMFS will allow each cooperative to submit the inter-cooperative agreement prior to December 31, 2023.

(b) *Allocations of Pacific cod to the PCTC Program*—(1) *General*. Each calendar year, the Regional Administrator will determine the amount of the BSAI trawl catcher vessel sector's Pacific cod A and B season allocations that will be assigned to the PCTC Program as follows:

(i) *Incidental catch allowance (ICA)*. For the A and B seasons, the Regional Administrator will establish an ICA to account for projected incidental catch of Pacific cod by trawl catcher vessels engaged in directed fishing for groundfish other than PCTC Program Pacific cod.

(ii) *Directed fishing allowance (DFA)*. The remaining trawl catcher vessel sector's Pacific cod A and B season allocations are established as a DFA for the PCTC Program.

(2) *Calculation*—(i) *Determination of Pacific cod trawl catcher vessel TAC allocated to the PCTC Program*. NMFS will determine the Pacific cod trawl catcher vessel TAC in a calendar year in the annual harvest specification process at § 679.20.

(ii) *Annual apportionment of Pacific cod trawl catcher vessel TAC*. The annual apportionment of Pacific cod in the A and B seasons between the PCTC Program DFA and the ICA in a given calendar year is established in the annual harvest specifications.

(3) *Allocations of Pacific Cod DFA to PCTC Program*—(i) *Harvester percentage of DFA*. NMFS will assign 77.5 percent of the PCTC Program DFA to the QS attached to LLP licenses assigned to PCTC Program cooperatives. Each LLP license's QS units will

correspond to a portion of the DFA according to the following equation: (LLP license QS units / (sum of all LLP license QS units)) x (.775 x DFA).

(ii) *Processor percentage of DFA*. NMFS will assign 22.5 percent of the PCTC Program DFA to the QS attached to PCTC Program QS permits assigned to PCTC Program cooperatives. Each QS permit's QS units will correspond to a portion of the DFA according to the following equation: (PCTC Program QS permit QS units / (sum of all PCTC Program QS permit QS units)) x (.225 x DFA).

(4) *Allocation of CQ to PCTC Program cooperatives*—(i) *General*. Annual CQ will be issued to each PCTC Program cooperative by NMFS based on the aggregate QS attached to LLP licenses and PCTC Program QS permits that are assigned to the cooperative. NMFS will issue CQ by A and B season and cooperatives will ensure the seasonal limits are not exceeded. Unused A season CQ may be rolled over to the B season. Annual CQ may be harvested from either BS or AI subareas subject to any limitations on BS harvest when the AI set-aside is in effect.

(ii) *CQ allocation to PCTC Program cooperatives*. The amount of CQ that is issued to a PCTC Program cooperative is calculated according to the following formula:

CQ derived from QS assigned to LLP holders =

$[(.775 \times \text{DFA})$

$\times (\text{Total LLP license QS units assigned to that cooperative} / \text{sum of all LLP license QS units})]$

CQ derived from QS assigned to PCTC Program QS permit holders =

$[(.225 \times \text{DFA})$

$\times (\text{Total PCTC Program Permit QS units assigned to that cooperative} / \text{sum of all PCTC Program QS permit QS units})]$

The total CQ issued to that cooperative =

CQ derived from LLP license holders +

CQ derived from PCTC Program QS permit holders



(iii) *Issuance of CQ.* A and B season trawl catcher vessel Pacific cod sector DFAs will be issued to PCTC Program cooperatives as CQ. Annual CQ for each PCTC cooperative will include separate A and B season CQ.

(iv) *AI set-aside.* When in effect, the AI set-aside will be established annually as specified further at § 679.132.

(c) *Allocations of halibut PSC*—(1) *Halibut PSC limit for the PCTC Program.* NMFS specifies the overall halibut PSC limit for the PCTC Program for each calendar year in the harvest specifications pursuant to the procedures specified at §679.21(b). NMFS calculates the halibut PSC limit according to the formula described in this paragraph. NMFS assigns that halibut PSC limit to PCTC Program cooperatives pursuant to paragraph (a)(1)(i) of this section.

(i) Multiply the halibut PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category by 98 percent, which yields the halibut PSC apportioned to the trawl catcher vessel sector. The remaining 2 percent is apportioned to the AFA catcher/processor sector as specified at § 679.21(b)(4).

(ii) Assign 95 percent of the trawl catcher vessel sector's halibut PSC limit to the A and B seasons and 5 percent to the C season.

(iii) Each year after apportioning halibut PSC to the trawl catcher vessel sector for the A and B season, apply one of the following reductions to the A and B season trawl catcher vessel halibut PSC limit to determine the overall PCTC Program halibut PSC limit:

(A) In the first year of the PCTC Program, reduce the A and B season halibut PSC limit by 12.5 percent.

(B) In the second year, and each year thereafter, reduce the A and B season halibut PSC limit by 25 percent.

(2) *Halibut PSC assigned to each PCTC Program cooperative.* For each calendar year, the amount of halibut PSC assigned to a cooperative is determined by the following procedure and the amount will be specified on the CQ permit:

(i) Divide the amount of CQ units assigned to each PCTC Program cooperative by the amount of CQ allocated to all cooperatives. This yields the percentage of CQ units held by each cooperative.

(ii) Multiply the overall PCTC Program halibut PSC limit by the percentage of the CQ assigned to a cooperative. This yields the amount of halibut PSC issued to that cooperative as CQ.

(3) *Use of halibut PSC in the PCTC Program.* Halibut PSC limits assigned to the CQ permit issued to a PCTC Program cooperative may only be used by the members of that PCTC Program cooperative while harvesting CQ in the BSAI. Any halibut PSC used by a cooperative must be deducted from the amount of halibut PSC on its CQ permit. Halibut PSC limits for cooperatives are not subject to seasonal apportionment under § 679.21. Halibut PSC limits are issued to the PCTC Program for the duration of the A and B seasons. Unused halibut PSC limits may be reapportioned to the C season.

(d) *Allocations of crab PSC—(1) Crab PSC limits for the PCTC Program.* NMFS specifies the overall crab PSC limit for the PCTC Program for each calendar year in the harvest specifications pursuant to the procedures specified at § 679.21(e). NMFS calculates the crab PSC limit according to the formula described in this paragraph. NMFS then assigns that crab PSC limit to PCTC Program cooperatives with CQ pursuant to paragraph (a)(1)(i) of this section.

(i) Multiply the crab PSC limit apportioned to the BSAI trawl limited access sector's Pacific cod fishery category by 90.6 percent, which yields the percentage of crab PSC apportioned to the trawl catcher vessel sector. The remaining 9.4 percent goes to the AFA catcher/processor sector as specified at § 679.21(b)(4).

(ii) Assign 95 percent of the trawl catcher vessel sector's crab PSC limit to the A and B seasons and 5 percent to the C season.

(iii) Reduce the A and B season trawl catcher vessel crab PSC limit by 35 percent to determine the overall PCTC Program crab PSC limit.

(2) *Crab PSC assigned to each PCTC Program cooperative.* For each calendar year, the amount of crab PSC limit assigned to a cooperative is determined by the following procedure and the amount will be specified on the CQ permit:

(i) Divide the amount of CQ assigned to each PCTC Program cooperative by the total CQ assigned to all cooperatives. This yields the percentage of CQ held by that cooperative.

(ii) Multiply the overall PCTC Program crab PSC limit by the percentage of the CQ pool assigned to a cooperative. This yields the crab PSC limit issued to that cooperative as CQ.

(3) *Use of crab PSC in the PCTC Program.* Crab PSC limits assigned to the CQ permit issued to a PCTC Program cooperative may only be used by the members of that PCTC Program cooperative while harvesting CQ in the BSAI. Any crab PSC used by a cooperative must be deducted from the amount of crab PSC limit on its CQ permit. Crab PSC limits for cooperatives are not subject to seasonal apportionment under § 679.21. Crab PSC limits are issued to the PCTC Program for the duration of the A and B seasons. Unused crab PSC limits may be reapportioned to the C season.

(e) *Transfer of PSC limits.* Halibut and crab PSC limits are transferable between cooperatives according to the same rules established for CQ in paragraph (i) of this section.

(f) *Non-allocated Groundfish species.* The PCTC Program allocations are for directed fishing for Pacific cod by trawl catcher vessels. All groundfish species not

allocated to PCTC Program cooperatives are managed to the maximum retainable amounts (MRAs), as described under § 679.20(e).

(g) *Rollover of Pacific cod.* If, after June 10, the Regional Administrator determines that reallocating a portion of the Pacific cod ICA or DFA from the PCTC Program to the BSAI trawl limited access sector C season is appropriate, the Regional Administrator may do so through notification in the **Federal Register** consistent with regulations at § 679.20(a)(7)(iii).

(h) *Rollover of PSC to the C Season.* If, after June 10, the Regional Administrator determines that reallocating a portion of the halibut or crab PSC limits from the PCTC Program to the BSAI trawl limited access sector C season is appropriate, the Regional Administrator may do so through notification in the **Federal Register** consistent with regulations at § 679.91(f)(4) and (5).

(i) *Process for inter-cooperative transfer of CQ.* NMFS will process an application through the NMFS online system for an inter-cooperative transfer of CQ, including PSC, provided that all information is completed by the transferor and transferee, with all applicable fields accurately filled in, and all required documentation is provided.

(j) *PCTC Program cooperatives—(1) General.* This section governs the formation and operation of PCTC Program cooperatives. The regulations in this section apply only to PCTC Program cooperatives that have formed for the purpose of applying for and fishing with CQ issued annually by NMFS. PCTC Program cooperatives and cooperative members are responsible for ensuring the conduct of cooperatives is consistent with any relevant State or Federal antitrust laws. Membership in a cooperative is voluntary. No person may be required to join a cooperative. Any LLP license holder with PCTC Program QS may join a PCTC Program cooperative and assign their QS to that cooperative. Members may leave a cooperative, but any CQ derived from the QS

held by that member will remain with that cooperative for the duration of the calendar year.

(2) *Legal and organizational requirements.* A PCTC Program cooperative must meet the following legal and organizational requirements before it is eligible to receive CQ:

(i) Each PCTC Program cooperative must be formed as a partnership, corporation, or other legal business entity that is registered under the laws of one of the 50 States or the District of Columbia;

(ii) Each PCTC Program cooperative must appoint an individual as the designated representative to act on the cooperative's behalf and to serve as a contact point for NMFS for questions regarding the operation of the cooperative. The designated representative may be a member of the cooperative, or some other individual designated by the cooperative to act on its behalf;

(iii) Each PCTC Program cooperative must submit a timely and complete application for CQ; and

(iv) Each PCTC Program cooperative must meet the mandatory requirements established in paragraph (j)(3) of this section.

(3) *Elements of PCTC Program cooperatives.* The following table describes the necessary elements to form and operate a PCTC Program cooperative:

(i) Who may join or associate with a PCTC Program cooperative?	Any PCTC Program QS holder named on a timely and complete application for CQ for that calendar year that is approved by NMFS. Individuals who are not QS holders may be employed by, or serve as the designated representative of, a cooperative, but cannot be members of the cooperative. Any processor with an FFP may associate with a cooperative. A processor with an FFP must be named on an LLP license with a BSAI Pacific cod trawl mothership endorsement.
(ii) What is the minimum number of LLP licenses required to form a cooperative?	A minimum of three LLP licenses are needed to form a cooperative.

(iii) How many unique LLP license holders are required to form a cooperative?	There is no minimum number of unique LLP license holders required to form a cooperative.
(iv) Is there a minimum amount of PCTC Program QS units that must be assigned to a PCTC Program cooperative?	No.
(v) What is allocated to the PCTC Program cooperatives?	A and B season CQ for Pacific cod, halibut PSC limits, and crab PSC limits, based on the total QS units assigned to the cooperative by its members.
(vi) Is this CQ an exclusive catch and use privilege?	Yes, the cooperative has an exclusive privilege to collectively catch and use this CQ. A cooperative can transfer all or a portion of this CQ to another cooperative.
(vii) Is there a period in a calendar year during which PCTC Program cooperative vessels may catch Pacific cod?	Yes, any cooperative vessel may harvest CQ during the during the A and B seasons specified at § 679.130(a)(2).
(viii) Can any vessel catch a PCTC Program cooperative's Pacific cod?	No, only vessels that are listed on the cooperative's Application for PCTC Program CQ may catch Pacific cod assigned to that cooperative.
(ix) Can a member of a PCTC Program cooperative transfer CQ individually without the approval of the other members of the cooperative?	No, only the designated representative of the cooperative, and not individual members, may transfer CQ to another cooperative, and only if that transfer is approved by NMFS.
(x) Are GOA sideboard limits assigned to specific persons or PCTC Program cooperatives?	Existing sideboard limits apply to individual vessels or LLP license holders, not cooperatives.
(xi) Can PCTC Program QS assigned to an LLP license or QS held by processors be assigned to more than one PCTC Program cooperative in a calendar year?	QS assigned to an LLP license may be assigned to only one cooperative in a calendar year. Multiple QS permits or LLP licenses held by a single person are not required to be assigned to the same cooperative. A processor may associate with more than one cooperative and any QS held by the processor would be divided between the associated cooperatives in the same proportion as the CQ derived from the LLP licenses.
(xii) Which members may catch the PCTC Program cooperative's CQ?	Use of a cooperative's CQ is determined by the cooperative contract signed by its members. Any violations of this contract by a cooperative member may be subject to civil claims by other members of the cooperative.
(xiii) Does a PCTC Program cooperative need a membership agreement or contract?	Yes, a cooperative must have a membership agreement or contract. A copy of this agreement or contract must be submitted to NMFS with the application for CQ. The membership agreement or

	contract must specify: (A) How the cooperative intends to harvest its CQ; and (B) The obligations of QS holders, who are members of a cooperative, to ensure the full payment of fee liabilities that may be due.
(xiv) What happens if the PCTC Program cooperative membership agreement or contract is modified during the fishing year?	A copy of the amended membership agreement or contract must be sent to NMFS in accordance with § 679.131.
(xv) What happens if the cooperative exceeds its CQ amount?	A cooperative is not authorized to catch Pacific cod or use halibut or crab PSC limits in excess of the amount on its CQ permit. Exceeding a CQ permit is a violation of the regulations.
(xvi) Is there a limit on how much CQ a PCTC Program cooperative may hold?	No, but each QS holder is subject to ownership caps, and a vessel may be subject to vessel use caps. See § 679.133.
(xvii) Is there a limit on how much Pacific cod a vessel may catch?	Yes, generally a vessel may not catch more than 5 percent of the Pacific cod assigned to the PCTC Program for that calendar year. See § 679.133 for use cap provisions.
(xviii) Are there any special reporting requirements?	The designated representative of the cooperative may submit an annual PCTC Program cooperative report to the North Pacific Fishery Management Council.
(xix) Is there a requirement that a PCTC Program cooperative pay PCTC Program cost recovery fees?	Yes, see § 679.135 for the provisions that apply. PCTC Program cooperatives are responsible for paying cost recovery fees.
(xx) Is there any restriction on deliveries of CQ?	Sometimes, if the AI CQ set-aside is in effect for the fishing year as specified at § 679.132. Cooperatives must establish, through an inter-cooperative agreement, how 12 percent of the BSAI A season CQ will be set aside for delivery to an Aleutian Islands shoreplant.

(4) *Successors-in-interest.* If a member of a PCTC Program cooperative dies (in the case of an individual) or dissolves (in the case of a business entity), the CQ derived from the QS assigned to the cooperative for that year from that person remains under the control of the cooperative for the duration of that calendar year as specified in the cooperative contract. Each cooperative is free to establish its own internal procedures for

admitting a successor-in-interest during the fishing season due to the death or dissolution of a cooperative member.

**§ 679.132 Aleutian Islands CQ set-aside provisions in the PCTC Program.**

*(a) Aleutian Islands CQ set-aside provisions in the PCTC Program—(1)*

*Calculation of the Aleutian Islands Pacific cod non-CDQ ICA and DFA.* Each year, during the annual harvest specifications process set forth at § 679.20(c), the Regional Administrator will specify the AI Pacific cod non-CDQ ICA, the DFA from the AI Pacific cod non-CDQ TAC, and the AI set-aside as follows:

*(2) Aleutian Islands Pacific cod non-CDQ ICA.* The AI Pacific cod non-CDQ ICA will be deducted from the aggregate portion of the AI Pacific cod non-CDQ TAC annually allocated to the non-CDQ sectors identified at § 679.20(a)(7)(ii)(A).

*(3) Aleutian Islands Pacific cod non-CDQ DFA.* The AI Pacific cod non-CDQ DFA will be the amount of the AI Pacific cod TAC remaining after subtraction of the AI Pacific cod CDQ reserve and the AI Pacific cod non-CDQ ICA.

*(4) Calculation of the Aleutian Islands CQ set-aside.* The Regional Administrator will specify the AI set-aside in either of the following ways:

(i) When the AI DFA exceeds 12 percent of A season CQ, the AI set-aside is 12 percent of the PCTC Program A season CQ and is in effect during the A and B seasons.

(ii) If the AI non-CDQ DFA is below 12 percent of the PCTC Program A season CQ, then the AI set-aside will be set equal to the AI non-CDQ DFA and is in effect during the A and B seasons. When the AI set-aside is in effect and set equal to the AI non-CDQ DFA, directed fishing for Pacific cod in the AI may only be conducted by PCTC Program vessels that deliver their catch of AI Pacific cod to an Aleutian Islands shoreplant. After June 10, the Regional Administrator may open directed fishing for AI non-CDQ Pacific cod for other sectors.



(b) *Annual notice of intent to process Aleutian Islands Pacific cod*—(1)

*Submission of notice.* The provisions of this section will apply if a representative of either the City of Adak or the City of Atka submits to the Regional Administrator a timely and complete notice of its intent to process PCTC Program Pacific cod during the upcoming fishing year.

(2) *Submission method and deadline.* The notice of intent to process PCTC Program Pacific cod for the upcoming fishing year must be submitted in writing to the Regional Administrator by a representative of the City of Adak or the City of Atka no later than October 15 of each year in order for the provisions of this section to apply during the upcoming fishing year. Notices of intent to process received later than October 15 may not be accepted by the Regional Administrator.

(3) *Contents of notice.* A notice of intent to process PCTC Program Pacific cod for the upcoming fishing year must contain the following information:

- (i) Date of submission,
- (ii) Name of city,
- (iii) Statement of intent to process PCTC Program Pacific cod,
- (iv) Identification of the fishing year during which the city intends to process PCTC Program Pacific cod,
- (v) Contact information for the representative of the city, and
- (vi) Documentation of authority to represent the City of Adak or the City of Atka.

(4) *NMFS confirmation and notice.* On or before November 30, the Regional Administrator will notify the representative of the City of Adak or the City of Atka, confirming receipt of their official notice of intent to process PCTC Program Pacific cod. Then, NMFS will announce through notification in the **Federal Register** whether the AI set-aside will be in effect for the upcoming fishing year.

(5) *AI CQ set-aside PCTC Program cooperative provisions.* If the representative of the City of Adak or the City of Atka submits a timely and complete notice of intent to process in accordance of this section, then the following provisions will apply for the fishing year following the notice:

(i) The PCTC Program cooperative(s) are required to set-aside an amount of CQ calculated by the Regional Administrator pursuant to (a)(4) of this section for delivery to an Aleutian Islands shoreplant as defined at § 679.2.

(ii) All cooperatives must enter into an inter-cooperative agreement that describes how the AI set-aside will be administered by the cooperatives to ensure that the PCTC Program harvests from the BS do not exceed the minimum set-aside. This inter-cooperative agreement must establish how the cooperatives intend to harvest the AI set-aside when it applies. This inter-cooperative agreement must be provided as part of the annual PCTC Program cooperative application as specified at § 679.131(a)(4) and is required before NMFS can issue CQ.

(iii) The inter-cooperative agreement must establish how cooperatives would ensure that trawl catcher vessels less than 60 ft (18.3 m) LOA assigned to an LLP license with a transferable AI trawl endorsement have the opportunity to harvest 10 percent of the AI set-aside for delivery to an Aleutian Islands shoreplant.

(c) *PCTC Program A season CQ set-aside limitations.* (1) If the Regional Administrator has approved a notice of intent to process, vessels authorized under the PCTC Program shall not harvest the amount of the AI set-aside in the BS subarea.

(2) PCTC Program cooperatives may not deliver more than the PCTC A season CQ minus the AI set-aside established under this section to processors in the BS subarea when the AI CQ set-aside is in effect.

(3) The City of Adak or the City of Atka may withdraw their annual notice of intent to process prior to the end of B season.

(4) The Regional Administrator may remove the delivery requirement for some or all of the projected unused AI CQ set-aside if the Regional Administrator determines that the Aleutian Islands shoreplants will not process the entire AI CQ set-aside.

(5) In the event all notices of intent to process are withdrawn, the Regional Administrator will remove the delivery requirement for CQ that was set-aside for that calendar year.

(6) To remove the AI CQ set-aside delivery requirement for that calendar year, the Regional Administrator will publish a document in the **Federal Register**.

**§ 679.133 PCTC Program ownership caps, use caps, and sideboard limits.**

(a) *Ownership and use caps*—(1) *General*. (i) Ownership caps limit the amount of PCTC Program QS that may be owned by a harvester or processor and their affiliates. Use caps limit the amount of CQ that may be harvested by a vessel or received and processed by a processor.

(ii) Use caps do not apply to halibut or crab PSC CQ.

(iii) Ownership and use caps may not be exceeded except as provided under paragraph (a)(6) of this section.

(iv) All QS ownership caps are a percentage of the initial PCTC Program QS pool established by NMFS at § 679.130(e).

(v) The CQ processing use cap is a percentage of the total amount of CQ issued to cooperatives during a calendar year.

(vi) The vessel use cap is a percentage of the amount of CQ assigned to the PCTC Program during a calendar year.

(2) *Harvester PCTC Program QS ownership cap*. A person may not individually or collectively own more than 5 percent of the PCTC Program QS initially assigned to harvesters unless that person qualifies for an exemption to this ownership cap under

paragraph (a)(6) of this section based on their qualifying catch history. Processor-issued QS does not count toward this ownership cap.

(3) *Vessel use cap.* A catcher vessel may not harvest an amount of CQ greater than 5 percent of the CQ issued to the PCTC Program during a calendar year unless that vessel qualifies for an exemption to this use cap under paragraph (a)(6) of this section based on their qualifying catch history.

(4) *Processor ownership cap.* A person may not individually or collectively own more than 20 percent of the PCTC Program QS initially assigned to processors unless that person qualifies for an exemption to this ownership cap under paragraph (a)(6) of this section based on their qualifying processing history.

(5) *Processing use cap.* A processor, at the firm or company level, may not process more than 20 percent of the CQ assigned to the PCTC Program during a calendar year unless that processor qualifies for an exemption to this use cap under paragraph (a)(6) of this section based on their qualifying processing history. The amount of CQ that is received by a PCTC Program processor is calculated based on the sum of all landings made with CQ received or processed by that processor and the CQ received or processed by any person affiliated with that processor as that term is defined at § 679.2.

(6) *Cap exemptions.* (i) A person may receive an initial allocation of PCTC Program QS in excess of the harvester ownership cap. This exemption is non-transferable.

(ii) A person may receive an initial allocation of PCTC Program QS in excess of the processor ownership cap. This exemption is non-transferable.

(iii) A vessel designated on an LLP license that received an initial allocation of PCTC Program QS in excess of the harvester ownership cap may harvest CQ in excess of the vessel use cap up to the amount of CQ resulting from QS assigned to the LLP license. This exemption is non-transferable.

(iv) A processor that received an initial allocation of PCTC Program QS in excess of the processor ownership cap may process more than 20 percent of CQ during a calendar year up to an amount of CQ proportional to the ratio of QS held by the processor to the total amount of QS held by processors. This exemption is non-transferable. An Aleutian Islands shoreplant is not subject to this processor use cap.

(7) *Transfer limitations.* An eligible harvester that receives an initial allocation of PCTC Program QS that exceeds the ownership cap listed in paragraph (a)(2) of this section shall not receive any PCTC Program QS by transfer unless and until the eligible harvester's holdings of PCTC Program QS in the PCTC Program are reduced to an amount below the use cap specified in this paragraph (a).

(b) *Sideboard limits - general.* The regulations in this section restrict the holders of LLP licenses issued PCTC Program QS from using the increased flexibility provided by the PCTC Program to expand their level of participation in GOA groundfish fisheries.

(1) *Sideboard limit restrictions for LLP licenses authorizing AFA non-exempt catcher vessels.* LLP licenses that authorize AFA non-exempt catcher vessels will be subject to the sideboard limitations specified at § 679.64(b)(4)(i).

(2) *At-Sea Processing Sideboard Limit.* A sideboard limit will be specified on each LLP license with a BSAI Pacific cod trawl mothership endorsement. Each LLP license with a BSAI Pacific cod trawl mothership endorsement may receive CQ deliveries from a catcher vessel not to exceed 125 percent of a catcher/processor's processing history as defined at § 679.130 and subject to eligibility requirements under BSAI FMP Amendment 120 to limit CPs acting as motherships.

**§ 679.134 PCTC Program permits, catch monitoring, catch accounting, and recordkeeping and reporting.**

(a) *Permits.* For permit information, please see § 679.4(q).

(b) *Catch monitoring requirements for PCTC Program catcher vessels.* The owner and operator of a catcher vessel must ensure the vessel complies with the observer coverage requirements described at § 679.51(a)(2) at all times the vessel is participating in a PCTC Program cooperative.

(c) *Catch monitoring requirements for motherships receiving unsorted codends from a PCTC Program catcher vessel—*(1) *Catch weighing.* All catch, except halibut sorted on deck by vessels participating in the halibut deck sorting described at § 679.120, must be weighed on a NMFS-approved scale in compliance with the scale requirements at § 679.28(b). Each haul must be weighed separately and all catch must be made available for sampling by an observer.

(2) *Additional catch monitoring requirements.* Comply with catch monitoring requirements specified at § 679.93(c).

(d) *Catch monitoring requirements for shoreside processors.* All groundfish landed by catcher vessels described at § 679.51(a)(2) must be sorted, weighed on a scale approved by the State of Alaska as described at § 679.28(c), and be made available for sampling by an observer, NMFS staff, or any individual authorized by NMFS. Any of these persons must be allowed to test any scale used to weigh groundfish to determine its accuracy.

(e) *Catch accounting—*(1) *Pacific cod.* All Pacific cod harvests by a vessel that is named on a PCTC Program CQ application and fishing under a CQ permit will be debited against the CQ for that cooperative during the fishing seasons as defined at § 679.130(a)(2).

(2) *PCTC Program halibut and crab PSC.* All halibut and crab PSC used by a vessel that is named on an Application PCTC Program CQ and fishing under a CQ permit will be debited against the CQ for that cooperative during the fishing seasons as defined at § 679.130(a)(2).

(3) *Groundfish sideboard limits.* All groundfish harvests in the BSAI and GOA that are subject to a sideboard limit for that groundfish species as described under § 679.133(c), except groundfish harvested by a vessel when participating in the Central GOA Rockfish Program, will be debited against the applicable sideboard limit.

(f) *Recordkeeping and reporting.* The owners and operators of catcher vessels and processors authorized as participants in the PCTC Program must comply with the applicable recordkeeping and reporting requirements of this section and must assign all catch to a PCTC Program cooperative as applicable at the time of catch or receipt of Pacific cod. All owners of catcher vessels and processors authorized as participants in the PCTC Program must ensure that their designated representatives or employees comply with all applicable recordkeeping and reporting requirements.

(1) *Logbook*—(i) *DFL.* Operators of catcher vessels participating in the PCTC Program fishery must maintain a daily fishing logbook for trawl gear as described at § 679.5.

(ii) *ELB.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement or a mothership receiving CQ must use a combination of NMFS-approved catcher/processor trawl gear ELB and eLandings to record and report groundfish and PSC information as described at § 679.5 to record PCTC Program landings and production.

(2) *eLandings.* Managers of shoreside processors that receive Pacific cod in the PCTC Program must use eLandings or NMFS-approved software as described at § 679.5(e) to record PCTC Program landings and production.

(3) *Production reports.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement that receives and purchases landings of CQ must submit a production report as described at § 679.5(e)(10).

(4) *Product transfer report (PTR), processors.* Operators of a catcher/processor designated on an LLP license with a BSAI Pacific cod trawl mothership endorsement and managers of shoreside processors that receive and purchase landings of CQ must submit a PTR as described at § 679.5(g).

(5) *Vessel monitoring system (VMS) requirements.* Operators of catcher vessels assigned to a PCTC Program cooperative or that are subject to sideboard limits detailed at § 679.133 must use functioning VMS equipment as described at § 679.28(f) at all times when operating in a reporting area off Alaska during the A and B season.

(6) *PCTC Program cost recovery fee submission* (See § 679.135).

(7) *Pacific cod Ex-vessel Volume and Value Report.* A processor that receives and purchases landings of CQ must submit annually to NMFS a complete Pacific cod Ex-vessel Volume and Value Report, as described at § 679.5(u) for each reporting period for which the PCTC processor receives CQ.

**§ 679.135 PCTC Program cost recovery.**

(a) *Cost recovery fees—(1) Responsibility.* Each PCTC Program cooperative must comply with the requirements of this section.

(i) Subsequent transfer of CQ or QS held by PCTC Program cooperative members does not affect the cooperative's liability for noncompliance with this section.

(ii) Non-renewal of a CQ permit does not affect the cooperative's liability for noncompliance with this section.

(iii) Changes in the membership in a PCTC Program cooperative, such as members joining or departing during the relevant year, or changes in the amount of QS holdings of those members does not affect the cooperative's liability for noncompliance with this section.



(2) *Fee collection.* PCTC Program cooperatives that receive CQ are responsible for submitting the cost recovery payment for all CQ landings made under the authority of their CQ permit.

(3) *Payment.* (i) A cooperative must submit any cost recovery fee liability payment(s) no later than August 31 following the calendar year in which the CQ landings were made.

(ii) Make electronic payment payable to NMFS.

(iii) Submit payment and related documents as instructed on the NMFS Alaska Region website as defined at § 679.2.

(iv) Payment must be made electronically in U.S. dollars using an approved payment method available on the payment website.

(b) *Pacific cod standard ex-vessel value determination and use.* NMFS will use the standard prices calculated for Pacific cod based on information provided in the Pacific Cod Ex-vessel Volume and Value Report described at § 679.5(u)(1) from the previous calendar year.

(c) *PCTC Program fee percentage—(1) Fee percentage.* The fee percentage is the amount as determined by the factors and methodology described in paragraph (c)(2) of this section. This amount will be announced by publication in the **Federal Register**. This amount must not exceed 3.0 percent of the gross ex-vessel value pursuant to 16 U.S.C. 1854(d)(2)(B).

(2) *Calculating fee percentage value.* Each year NMFS shall calculate and publish the fee percentage following the fishing season in which the CQ landings were made, according to the following factors and methodology:

(i) NMFS must use the following factors to determine the fee percentage:

(A) The catch to which the PCTC Program cost recovery fee will apply;

(B) The ex-vessel value of that catch; and

(C) The costs directly related to the management, data collection, and enforcement of the PCTC Program.

(ii) NMFS must use the following equations to determine the fee percentage:

$$100 \times \text{DPC}/\text{V}$$

where:

DPC = the direct program costs for the PCTC Program for the previous calendar year with any adjustments to the account from payments received in the previous year.

V = total of the standard ex-vessel value of the catch subject to the PCTC cost recovery fee liability for the current year.

(iii) The calculated fee percentage is applied to the ex-vessel value of CQ landings made in the previous calendar year.

(3) *Applicable fee percentage.* The cooperative must use the fee percentage applicable at the time a PCTC landing is debited from a CQ allocation to calculate the cost recovery fee liability for any retroactive payments for CQ landed.

(4) *Fee liability determination for a cooperative.* (i) All cooperatives are subject to a fee liability for any CQ debited from a CQ allocation during a calendar year.

(ii) The PCTC Program fee liability assessed to a PCTC Program cooperative is based on the proportion of the standard ex-vessel value of Pacific cod debited from the cooperative's CQ relative to all cooperatives during a calendar year as determined by NMFS.

(iii) NMFS will provide a fee liability summary letter to all cooperatives by no later than August 1 of each year. The summary will explain the fee liability determination including the current fee percentage, details of CQ pounds debited from CQ allocations by permit, species, date, and prices.

(d) *Underpayment of fee liability.* (1) Pursuant to § 679.131, no cooperative will receive any CQ unless that cooperative has made full payment of cost recovery liability at the time it applies for CQ.

(2) If a cooperative fails to submit full payment for PCTC Program cost recovery fee liability by the date described in paragraph (a)(3) of this section:

(i) At any time thereafter the Regional Administrator may send an IAD to the cooperative stating the amount of the cooperative's estimated fee liability that is past due and requesting payment. If payment is not received by the 30th day after the date on the IAD, the agency may pursue collection of the unpaid fees.

(ii) The Regional Administrator may disapprove any application to transfer CQ to or from the cooperative in accordance with § 679.130.

(iii) No CQ permit will be issued to that cooperative for that following calendar year and the Regional Administrator may continue to prohibit issuance of a CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

(iv) No CQ will be issued based on the QS held by the members of that PCTC Program cooperative to any other CQ permit for any subsequent calendar years until NMFS receives the unpaid fees.

(e) *Over payment.* Payment submitted to NMFS in excess of the annual PCTC Program cost recovery fee liability for a cooperative will be credited against the cooperative's future cost recovery fee liability unless the cooperative requests the agency refund the over payment. Payment processing fees may be deducted from any fees returned to the cooperative.

(f) *Appeals.* A cooperative that receives an IAD for incomplete payment of a fee liability may appeal the IAD pursuant to 15 CFR part 906.

(g) *Annual report.* Each year, NMFS will publish a report describing the PCTC Program cost recovery fee program.

13. Revise table 40 to part 679 to read as follows:

**Table 40 to Part 679 - BSAI Halibut PSC Sideboard Limits for AFA**

**Catcher/Processors and AFA Catcher Vessels**

<b>In the following target species categories as defined at § 679.21(b)(1)(iii) and (e)(3)(iv) . . .</b>	<b>The AFA catcher/processor halibut PSC sideboard limit in metric tons is . . .</b>	<b>The AFA catcher vessel halibut PSC sideboard limit in metric tons is...</b>
All target species categories	286	N/A
Pacific cod trawl	N/A	N/A
Pacific cod hook-and-line or pot	N/A	2
Yellowfin sole	N/A	101
Rock sole/flathead sole/“other flatfish” <sup>1</sup>	N/A	228
Turbot/Arrowtooth/Sablefish	N/A	0
Rockfish <sup>2</sup>	N/A	2
Pollock/Atka mackerel/“other species”	N/A	5

14. Revise table 56 to part 679 to read as follows:

**Table 56 to Part 679—GOA Species and Species Groups for Which Directed Fishing for Sideboard Limits by Non-Exempt AFA Catcher Vessels is Prohibited**

<b>Species or species group</b>	<b>Management or regulatory area and processing component (if applicable)</b>
Pollock	Southeast Outside District, Eastern GOA
Pacific cod	Eastern GOA, inshore component Eastern GOA, offshore component
Sablefish	Western GOA Central GOA Eastern GOA
Shallow-water flatfish	Western GOA Eastern GOA
Deep-water flatfish	Western GOA Central GOA Eastern GOA
Rex sole	Western GOA Eastern GOA
Arrowtooth flounder	Western GOA Eastern GOA

Flathead sole	Western GOA
	Eastern GOA
Pacific ocean perch	Western GOA
	Central GOA
	Eastern GOA
Northern rockfish	Western GOA
Shortraker rockfish	Western GOA
	Central GOA
	Eastern GOA
Dusky rockfish	Western GOA
	Central GOA
	Eastern GOA
Rougheye rockfish	Western GOA
	Central GOA
	Eastern GOA
Demersal shelf rockfish	Southeast Outside District
Thornyhead rockfish	Western GOA
	Central GOA
	Eastern GOA
Other rockfish	Central GOA
	Eastern GOA
Atka mackerel	GOA
Big skates	Western GOA
	Central GOA
	Eastern GOA
Longnose skates	Western GOA
	Central GOA
	Eastern GOA
Other skates	GOA
Sculpins	GOA
Sharks	GOA
Octopuses	GOA